No. 06-1537

In The
Supreme Court of the United States

ISLAMIC AMERICAN RELIEF AGENCY,

Petitioner,

vs.

ALBERTO GONZALES, in his individual and official capacity as Attorney General of the United States, and United States Department of Justice, JOHN SNOW, in his individual and official capacity as Secretary of the Department of Treasury, UNIDENTIFIED FBI AGENTS, PAUL SCHLUP, AND OTHER UNIDENTIFIED DEPARTMENT OF TREASURY PERSONNEL, in their individual and official capacities,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Courts have always determined whether one entity can constitutionally be held accountable for the misdeeds of another entity by reference to agency principals. The Circuit Court in this case created a new "branch standard" under which an allegation that one entity is a "branch" of another is legally distinct from an allegation that it is an "alias" or an "agent," and obviates the need for showing that the entity was controlled by the other or that it intended to further the misdeeds of the other. Did the Circuit Court err when it used this branch standard to hold that the Government could constitutionally seize the assets of an American charity, IARA-USA, based on the designation of a Sudanese entity as a terrorist-supporting organization, without any showing that the American charity funded the Sudanese entity, intended to further the misdeeds of the Sudanese entity, or was controlled by the Sudanese entity?

PARTIES TO THE PROCEEDING

Pursuant to Sup. Ct. R. 14.1(b), the following list identifies all of the parties appearing here and before the United States Supreme Court: Islamic Relief Agency, Alberto Gonzales, in his individual and official capacity as Attorney General of the United States, and United States Department of Justice, John Snow, in his individual and official capacity as Secretary of the Department of Treasury, Unidentified FBI Agents, Paul Schlup, and Other Unidentified Department of Treasury Personnel, in their individual and official capacities.

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 477 F.3d 728, and is reprinted in the appendix to the petition ("Pet. App.") at 1-19. The District Court's opinion is reported at 394 F. Supp. 2d 34, and is reprinted at Pet. App. 20-64.

JURISDICTION

The Court of Appeals entered its judgment on February 13, 2007. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation,

> and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

31 C.F.R. § 594.316 (2007), provides:

> The term "to be otherwise associated with," as used in § 594.201(a)(4)(ii), means:
>
> (a) To own or control; or
>
> (b) To attempt, or to conspire with one or more persons, to act for or on behalf of or to provide financial, material, or technological support, or financial or other services, to.

The International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, is set out in the appendix to this brief. Pet. App. 65-74.

Relevant executive orders – Exec. Order No. 13,224, 66 Fed. Reg. 49079 (Sept. 23, 2001), Exec. Order No. 13,268, 67 Fed. Reg. 44751 (July 2, 2002), and Exec. Order No. 13,372, 70 Fed. Reg. 8499 (Feb. 16, 2005) – are set out in the appendix to this brief. Pet. App. 75-89.

The relevant portion of the Administrative Procedure Act, 5 U.S.C. § 706, is set out in the appendix to this brief. Pet. App. 90.

STATEMENT OF THE CASE

This case is about whether the power of the United States Government to block the assets of terrorist-supporting organizations extends to guilt by mere association with another organization accused of financially supporting terrorists. Under Supreme Court and Circuit Court precedent, in order for an entity to be punished for the wrongdoing of a different, juridical entity, the Government is constitutionally required to show either that the entity acted as an agent or alias of the wrongdoing entity, or that the entity knew about the wrongful conduct and intended to act in furtherance of it. In this case, the D.C. Circuit Court has fashioned a new branch standard, which allows an entity to be punished solely based on affiliation with another entity, without any showing of an agency relationship and without any showing of an intent to further unlawful conduct.

The branch standard has no support in prior legal authority and seems to be based on nothing more than a semantic difference between the word "branch" and the words "alias" or "agent." The standard contradicts Supreme Court and Circuit Court precedent that has always treated an alleged branch as identical to an agent or alias.

Moreover, the D.C. Circuit Court's novel branch standard allows the government to punish an entity solely for associational activity protected by the First Amendment – affiliation and statements of support for entirely lawful

aims of another entity. For example, the American Red Cross, a distinct juridical entity chartered by the United States Government, shares a similar name with over 180 other Red Cross and Red Crescent national organizations around the world, shares fundamental principles with these groups, and openly affiliates with these "partners."[1] The American United Way, an independent juridical entity, affiliates with an independent organization, United Way International, which helps establish "United-Way type organizations" around the world, with 3,000 such United Way organizations currently operating in 45 different countries.[2] Under the Circuit Court's branch standard, if the Government finds that any one of these separate organizations, anywhere in the world, has given material support to terrorists, the Government may block the assets of the American charity, and effectively shut it down, without any showing that the American charity was an agent of the foreign entity, gave any funding to the foreign entity, was aware of the foreign entity's conduct, or had any intention of supporting it. A blocking of assets could be justified solely based on the sharing of a name and open affiliation with the foreign entity's humanitarian goals. Thus, the branch standard has a chilling and dangerous effect on associational freedoms that the Supreme Court should intervene to protect.

A. Factual Background

As pointed out by the District Court, Petitioner is at a disadvantage because it has been denied the ability to

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[1] http://www.redcross.org/services/intl/0,1082,0_323_,00.html

[2] http://www.uwint.org

view the classified portions of the record. *Islamic Am. Relief Agency v. Unidentified FBI Agents*, 394 F. Supp. 2d 34, 45 (D.D.C. 2005). However, the Circuit Court's erroneous conclusions of law did not turn on any factual disputes. The following are the salient, uncontested facts as adopted by the courts below:

The Islamic African Relief Agency ("IARA-USA"), based in Columbia, Missouri, was incorporated as a nonprofit, humanitarian agency in 1985. *Id.* at 39-40. The organization did not operate under any aliases, and did not have any parent entities, subsidiaries, or affiliates. Both the founding member of the organization and the attorney that created the organization submitted affidavits attesting to the organization's independence. Pet. App. 91-95. IARA-USA has been run at all times entirely by its own, American-based, independent Board, officers, directors, and employees. IARA-USA's books and tax statements have reflected only its own activities, and no consolidated tax returns were ever required or filed.

Since its inception, IARA-USA has "provided charitable and humanitarian aid to refugees, orphans, victims of human and natural disasters, and other poor and needy persons or entities throughout the world, without regard to faith or political affiliation." *Islamic Am. Relief Agency v. Unidentified FBI Agents*, 394 F. Supp. 2d at 39-40. In doing so, IARA-USA has regularly partnered with other organizations, including the United Nations Relief and Work Agency and the United States for International Development.

At the time of IARA-USA's incorporation, there existed another entity in the Sudan ("Sudanese entity"), with an identical name. *Id.* But in 2000, the Islamic

African Relief Agency changed its name to the Islamic American Relief Agency. *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 730-31 (D.C. Cir. 2006).

On October 13, 2004, the United States Department of Treasury, Office of Foreign Assets Control ("OFAC") designated the Sudanese entity as a Specially Designated Global Terrorist ("SDGT") and blocked its assets. The designation and blocking was under the authority of Global Terrorism Executive Order No. 13,224, § 1(d)(i), 66 Fed. Reg. 49079, at 49080 (Sept. 23 2001), and the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1707. The designation was based on OFAC's determination that the Sudanese entity provided financial or other support to terrorists. *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d at 731.

IARA-USA was not designated as an SDGT, but OFAC included IARA-USA in the blocking notice of the Sudanese entity based on its assertion that IARA-USA was the "United States Branch" of the Sudanese entity. *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d at 731. IARA-USA immediately contested the blocking, and, after failing to persuade OFAC to unblock its assets, IARA-USA filed suit in the United States District Court for the District of Columbia alleging that the blocking violated the Administrative Procedure Act, 5 U.S.C. § 706(2), the First, Fourth, and Fifth Amendments to the United States Constitution, and 42 U.S.C. § 1985(3), and claiming civil liability for False Affidavit. *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d at 731. The District Court granted summary judgment to the defendants on all claims. *Islamic Am. Relief Agency v. Unidentified FBI Agents*, 394 F. Supp. 2d 34 (D.D.C. 2005). The Circuit Court affirmed, but remanded on the single issue of the release of money

to pay IARA-USA's attorney fees. *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728 (D.C. Cir. 2006).

B. Proceedings Below

The United States Court of Appeals for the District of Columbia Circuit rejected all of IARA-USA's constitutional claims based solely on the conclusion that IARA-USA was a branch of the Sudanese entity. The Court noted that this was a case of first impression because the entity challenging the blocking (IARA-USA) did not directly support terrorists and was not the entity designated as an SDGT. *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d at 732. The question, as formulated by the Court, was "whether the record supports OFAC's conclusion that IARA-USA is a branch of [the Sudanese entity]." *Id.* at 733. IARA-USA argued that because the government penalized IARA-USA vicariously, based on a theory that it was in fact an alias or agent of the Sudanese entity, the appropriate standard would be that used for an alias designation – whether the alleged terrorist-supporting organization so dominates and controls the alias entity that they can be considered one organization. *Id.* at 732. The Court rejected the argument based on its conclusion, made without citation to any legal authority in support of the proposition, that a "branch" is somehow different from an alias or agent. *Id.* at 733. The Court determined that it must employ a test that reflects the government's theory under which the assets were blocked. *Id.* The control test applies to a theory under which there was a principal-agency relationship, and derives from ordinary principals of agency law. But because the government's theory was that IARA-USA was a "branch" of the Sudanese organization, according to the Court, agency law was inapplicable. *Id.* Thus, the logical foundation of the circuit court's holding is that the semantic difference

between calling an entity a "branch," rather than calling an agency an "alias" or "agent" brings the case out of the realm of agency law and calls for a distinct legal standard – a branch standard.

The Court next found that IARA-USA was a branch of the Sudanese organization. Acknowledging that the "unclassified record evidence is not overwhelming," the court nevertheless pointed to eight pieces of evidence that proved IARA-USA's branch status: 1.) IARA-USA was incorporated in the United States with an identical name to the Sudanese organization and, although the corporation changed its name eight years ago, the name remains similar; 2.) IARA-USA's Articles of Incorporation describe it as an "affiliate" of the Sudanese entity and includes a statement that it seeks to effect the same objectives as the Sudanese entity; 3.) The Sudanese entity is one of a list of entities to receive a portion of IARA-USA's assets upon its dissolution; 4.) Ten years ago, IARA-USA applied for a license to transfer funds to the Sudanese entity and described itself as an "affiliate" and "partner"; 5.) In a letter to the *Washington Times*, thirteen years ago, IARA-USA's executive director "implicitly accepted" a newspaper's characterization of IARA-USA as the "Khartoum-based Islamic relief agency," and referred to the Sudanese entity's "branch offices in the United States"; 6.) Some solicitation materials referred to "international headquarters" in Sudan; 7.) The Sudanese entity's web site referred to IARA-USA as a branch; and 8.) IARA-USA maintained financial connections with another organization, not accused of supporting terrorism, that is also alleged to be a branch of the Sudanese entity. *Id.* at 733-34. Thus, all of the evidence of IARA-USA's branch status involves speech and affiliation.

Once the Court determined that IARA-USA was a branch, and therefore the alleged support of terrorism by the Sudanese entity could be imputed to IARA-USA, all of IARA-USA's constitutional claims lost their footing on grounds that there is no "constitutional right to support terrorism." *Id.* at 735. Thus, the Government's seizing of IARA-USA's assets did not implicate the freedom of association because the Government "did not prevent or punish the associational activity of IARA-USA, but rather [the blocking] was directed at its funding of terrorists, as a branch of [the Sudanese entity]." *Id.* at 736. The Court was not deterred by the facts that IARA-USA never funded the Sudanese entity, let alone terrorists, and that the Court's assessment that IARA-USA was a "branch" of the Sudanese entity was itself based entirely on associational activity. The Court also held that its finding that IARA-USA was a branch of the Sudanese entity relieved the government from showing that IARA-USA funded terrorist organizations with an intent to aid their unlawful activities, because the intent requirement "is limited to cases in which liability was imposed by reason of association alone." *Id.* at 737. But in this case, according to the Circuit Court, the blocking was not based on association, but rather on the finding that IARA-USA was a branch. *Id.* The court similarly rejected IARA-USA's equal protection and free exercise of religion claims, on grounds that "[t]here is no free exercise right to fund terrorists." *Id.* at 736-37. Since IARA-USA never even funded the Sudanese entity that allegedly funded terrorists, this holding was also a vicarious finding, based on the Court's branch standard.

REASONS FOR GRANTING THE PETITION

I. The Circuit Court's New "Branch Standard" Conflicts With Prior Decisions of the United States Supreme Court and Circuit Courts and Violates the First Amendment By Allowing Guilt By Mere Association.

The D.C. Circuit Court's distinction between a "branch" and an "agent" conflicts with prior decisions of the United States Supreme Court and the Circuit Courts. The distinction creates a new standard by which an entity may be deemed a "branch" based solely on association with another entity, and once deemed a branch, the entity's freedom of association claim must be rejected because it is automatically imputed with the actions of the "parent." Thus, through semantics and circular logic, the Circuit Court has adopted a standard that bypasses the protections of the First Amendment. But the resulting guilt by association is impermissible under the Constitution. In the context of the blocking at issue, even the Government has recognized through its regulations that some showing of ownership or control – a showing of agency – is necessary to punish an entity for mere affiliation with another entity deemed an SDGT. Because of the conflict regarding this important principle, which has a severe effect on associational freedoms, the Supreme Court should clarify the issue.

A. The United States Supreme Court and Other Circuit Courts Have Always Treated a "Branch" as Indistinct from an "Alias" or "Agent," and Have Always Required the Government to Show an Agency Relationship Before Punishing an Entity Vicariously.

The Circuit Court's new branch standard contradicts Supreme Court precedent, which has routinely treated an allegation that an entity is a "branch" of another under agency principles, drawing no distinction between a branch and an agent.

When a national organization, the United Mine Workers of America, was sued for restraint of trade and property damage due to a strike by one of the Union's local districts, the United States Supreme Court had absolutely no question about the fact that agency law applied. *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344 (1922). There can be no doubt that the local district that organized the strike was a "branch" of the national union. The national organization, under its constitution, was divided into districts, subdistricts, and local unions. *Id.* at 383. The governing authority of the national organization was a general convention consisting of delegates from the local bodies. Each district also provided a member to the International Board. *Id.* The national organization had the authority to sanction and fund strikes through the local district. *Id.* at 384. Members' dues were split between the national treasury, district treasury, and local treasury. *Id.* The local organizations shared the same name as the national organization, and upon dissolution of a local body, all of its funds would be transmitted to the national organization. *Id.* "No organized corporation has

greater unity of action, and in none is more power centered in the governing executive bodies." *Id.* at 385.

The court held that "[i]t is a mere question of actual agency." *Id.* at 395. A corporation may be held liable for the acts of its agents, only if the acts are shown to be within the business of the corporation. *Id.* Because the national organization never initiated, participated in, or ratified the strike of its local district, a directed verdict in favor of the national union should have been granted. *Id.* at 393-96.

The D.C. Circuit Court's new branch standard directly contradicts the holding in *Coronado*. Under the branch standard, there would have been more than sufficient evidence that the local unions and districts were "branches" of the national organization. Once branch status was established, agency law would have become irrelevant. Any wrongdoing of the district or local unions would have automatically been imputed to the national organization. This novel legal proposition, for which the Circuit Court cited no authority, and for which none exists, represents a dangerous inroad into well-established organizational protections.

A similar situation arose in *National Ass'n for the Advancement of Colored People v. Overstreet*, 384 U.S. 118 (1966). In *Overstreet*, the Savannah Branch of the NAACP organized a boycott and picketing of a local market in order to protest an incident of racial violence perpetrated by the market's owner. *Id.* at 118-19. During the protest, there were incidents of intimidation of customers, blocking of sidewalks, and scattered violence. *Id.* at 119. The market sued the Savannah Branch as well as the national NAACP, and the trial judge instructed the jury that

"should it hold the Branch liable, it might also hold petitioner – the national NAACP – [liable] if the Branch were found to be its 'agent'." *Id.* The jury did make such a finding and awarded judgment against the National NAACP. The Georgia Supreme Court affirmed, and the United States Supreme Court issued, and eventually dismissed, a Writ of Certiorari. Justice Douglas' dissent explained that the Branch was concededly an affiliate of the national organization. *Id.* at 120. A portion of the Branch's dues were forwarded to the national NAACP, the Branch submitted annual reports to the national organization, and Branch members were automatically members of the national NAACP, with the right to attend annual national conventions. *Id.* Justice Douglas dissented on grounds that the national NAACP should not be held liable where it did not control the local Branch's conduct, did not order or authorize the demonstrations, and did not ratify them. *Id.* at 120-21. Because the First Amendment forbids imposition of liability of a national political association based on the misconduct of a local branch, without evidence that the national organization specifically authorized or ratified the misconduct, "a general finding of 'agency' or 'affiliation' is not enough." *Id.* at 125.

Overstreet is notable because neither the trial court, the Georgia Supreme Court, nor the dissenting Justices on the United States Supreme Court ever questioned the fact that agency law was applicable to a determination of whether one entity could be held accountable for the misconduct of another entity with a "branch" relationship. The question in *Overstreet* was whether a finding of agency was *enough* to constitutionally justify liability. In the instant case, the D.C. Circuit Court never reached that question, because it denied that agency law was even

relevant to the analysis. The Circuit Court held that IARA-USA's constitutional claims were based on a "misinterpretation" of the Government's basis for designation, and that the "dominates and controls" test was irrelevant to whether the blocking was constitutional because of the finding that IARA-USA was a "branch." *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d at 732.

The Supreme Court later turned the principles set forth in Justices Douglas' dissent into binding law, in *National Ass'n for the Advancement of Colored People v. Clairborne Hardware*, 458 U.S. 886 (1982). In *Clairborne*, plaintiff attempted to hold the national NAACP liable for the tortious boycott activities of its field secretary, Charles Evers. The Court held:

> "The associational rights of the NAACP and its members have been recognized repeatedly by this Court. The NAACP – like any other organization – of course may be held responsible for the acts of its agents throughout the country that are undertaken within the scope of their actual or apparent authority. Moreover, the NAACP may be held liable for other conduct of which it had knowledge and specifically ratified." *Clairborne*, 458 U.S. at 930.

But there was no evidence that the national NAACP gave any actual or apparent authority to commit violence, had any knowledge of the violence, or was in any way involved in the boycott. *Id.* at 930-31. Quoting Justice Douglas' *Overstreet* dissent with approval, the Court held that:

> "To equate the liability of the national organization with that of the Branch in the absence of any proof that the national authorized or ratified

> the misconduct in question could ultimately destroy it. The rights of political association are fragile enough without adding the additional threat of destruction by lawsuit. We have not been slow to recognize that the protection of the First Amendment bars subtle as well as obvious devices by which political association might be stifled." *Id.* at 931.

The Circuit Court's branch standard does not subtly stifle the protections of the First Amendment – it flagrantly infringes upon them. Moreover, the idea that a Branch is automatically imputed with the misdeeds of another entity, without regard to agency principles of scope of authority, intent, and knowledge, is inimical to the principles established by the Supreme Court in *Clairborne*. These principles have been routinely applied by the states. See, e.g., *Tsilimos v. National Ass'n for the Advancement of Colored People*, 187 Ga. App. 554 (Ga. Ct. App. 1988) (Holding that the NAACP could not be held liable for tortious flyers distributed by the Vidalia branch of the NAACP without proof of actual or apparent authorization, or ratification, of the branch's unlawful conduct).

Circuit Courts have also followed the Supreme Court's precedent in *Clairborne*, and have shown no inclination towards the new branch standard of the D.C. Circuit. The Seventh Circuit held that in order for defendant members of PLAN, a loose national organization of groups dedicated to anti-abortion protests, to be held liable for illegal activity at PLAN-sponsored protests, plaintiffs would have to show that the defendants were aware of PLAN's illegal aims and held a specific intent to further those aims. *National Org. for Women, Inc. v. Scheidler*, 267 F.3d 687 (7th Cir. 2001). Similarly, the Second Circuit has observed that unincorporated associations can be held liable for acts

of their agents under a theory of authorization. *Jund v. Town of Hempstead*, 941 F.2d 1271, 1279 (2nd Cir. 1991).

The Seventh Circuit applied the same rule in the context of alleged funding of terrorism. *Boim v. Quranic Literacy Institute*, 291 F.3d 1000 (7th Cir. 2002). In *Boim*, the parents of a United States citizen, murdered in Israel by Hamas terrorists, sued individuals and organizations for their loss. *Id.* at 1001. Plaintiffs alleged that two entities were actually "front organizations," used to fundraise and launder money in support of terrorism. *Id.* at 1023. Rather than analyzing whether the defendant entities were "branches" of Hamas, the Court cited *Claiborne* for the proposition that liability may not be imposed by association alone, unless the group itself possessed the unlawful goals, and the individual had a specific intent to further those goals. *Id.* at 1023. Thus, if plaintiff could show that defendant organizations were in fact raising money to support the terrorist operations that resulted in the murder, then their claim would not run afoul of the First Amendment. *Id.* at 1024. They had to show that the defendant organizations knew of Hamas' illegal activities and intended to help it accomplish those illicit goals when they contributed money to Hamas. *Id.* Whether the groups were "branches" simply was not relevant to the inquiry.

The new branch standard also breaks with the D.C. Circuit Court's own precedent. In *National Council of Resistance of Iran v. Department of State*, 362 U.S. App. D.C. 143 (D.C. Cir. 2004), the secretary of State designated the Mojahedin-e Khalq Organization (MEK) as a foreign terrorist organization. *Id.* at 153. The MEK's Farsi name translated in English as the People's Mojahedin Organization of Iran. *Id.* at 154 n.1. Another entity, the National Council of Resistance of Iran (NCRI) was found to be an

"alias" of MEK, and was therefore also designated as a foreign terrorist organization. *Id.* at 154. The Court discussed two distinct situations in which an "alias" theory may be applicable. The first is when a single entity is known by more than one name. As an example, the Court cited the MEK, which is known as the Mojahedin-e Khalq Organization in Farsi, and the People's Mojahedin Organization of Iran in English. *Id.* at 157. The second situation involves two entities with separate juridical identities. Under agency principals, "when one entity so dominates and controls another that they must be considered principal and agent, it is appropriate, under AEDPA, to look past their separate juridical identities and to treat them as aliases." *Id.* The FBI alleged that NCRI was the "political branch" of the MEK, and was "not a separate organization." *Id.* at 158. The Court found substantial evidence that NCRI was dominated and controlled by MEK, and therefore the alias finding was warranted.

The D.C. Circuit has now abandoned the analysis in *NCRI*, holding that agency law is irrelevant when the government asserts a branch theory. Like the two entities in *NCRI*, IARA-USA and the Sudanese entity unquestionably have "separate juridical identities," as IARA-USA is incorporated under the laws of the United States. The government's theory in the instant case was identical to the theory in *NCRI* – that the entity at issue was not a separate organization, but rather a branch of the alleged wrongdoing organization. But the D.C. Circuit Court gave no substantive reason why NCRI, an alleged branch of MEK, needed to be dominated or controlled in order to be vicariously punished for MEK's wrongdoing, but IARA-USA, an alleged branch of the Sudanese entity, is automatically imputed with the Sudanese entity's acts. There

is simply no substantive basis to draw a distinction between an "alias" and a "branch." Any difference is purely semantic.

The branch standard can only create confusion about when an organization may constitutionally be held vicariously accountable for the wrongdoing of another entity. Because the branch standard conflicts with Supreme Court precedent and decisions of the other circuits, the Court should grant certiorari in order to clarify this area of law.

B. The Circuit Court's Branch Standard Uses Semantics and Circular Logic to Circumvent the Constitution By Deeming an Entity a "Branch," Based Purely on Evidence of Association, Then Rejecting a Freedom of Association Claim on Grounds that the Entity is Not Being Punished For Association, But Rather for the Misconduct Vicariously Imputed to it as a Branch.

The Circuit Court's new branch standard is unconstitutional because it uses circular logic and semantics to allow the government to ignore the First Amendment freedom of association. Under the Circuit Court's analysis, first the Government may deem an entity a "branch" of an entity designated as a supporter of terrorism, using evidence of affiliation between the alleged branch and the alleged parent – the facts that the alleged branch never supported terrorism, never gave any money to the alleged parent or to terrorists, was never controlled by the alleged parent, and never supported or took any action in furtherance of the illicit aims of the alleged parent, are all irrelevant. Then, once affiliation has been used to establish a

"branch" relationship, the government may freely punish the branch, without being shackled by the First Amendment freedom of association, because there is no constitutional right to facilitate terrorism, and associational activity is not implicated.

The Circuit Court made its finding that IARA-USA was a branch of the Sudanese entity entirely based on evidence of association. *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 733-34 (D.C. Cir. 2006). IARA-USA originally chose a name identical to the Sudanese organization but subsequently changed its name. IARA-USA's officials, Articles of Incorporation, solicitation materials, and web site have at times made statements indicating association and affiliation with the Sudanese organization, and have expressed their support for the organization's humanitarian aims. *Id.* The only evidence that can even arguably constitute an action is that IARA-USA applied for a license, ten years ago, to donate charitable funds to the Sudanese entity in order to assist in relief, in response to the humanitarian crisis in Sudan at the time. Notably, UNICEF, a well-respected and widely known charity, entered into a contract to financially support the Sudanese entity for the same reason. *Id.* at 736. But IARA-USA's license was denied, and the record shows that IARA-USA never gave any funding to the Sudanese organization. Thus, the branch finding was supported merely by association.

Once the Circuit Court held that IARA-USA was a "branch" of the Sudanese entity, based on substantial evidence of association, the Court then agreed with the District Court's analysis that the "blocking did not prevent or punish the associational activity of IARA-USA, but rather was directed at its funding of terrorists, as a branch

of [the Sudanese entity]." *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d at 736. Obviously, the logic is circular: the Government may punish an entity as a branch, based entirely on evidence of association, but a "branch," by definition, is not being punished for association. By elevating the word "branch" to a status outside the realm of well-established agency law, the Circuit Court has created a standard by which the Government may freely ignore the First Amendment.

It is well established that guilt by association, without evidence that the association poses the threat feared by the Government, is an impermissible reason to deny First Amendment rights. *Healy v. James*, 408 U.S. 169 (1972). In *Healy*, college students at a public university applied to form a local chapter of an organization called Students for a Democratic Society (SDS), an organization that had a reputation for supporting violence and campus disruption. *Id.* at 172. The school denied recognition on grounds that the group's philosophy was antithetical to school policies and based on doubts about the campus group's independence from the national SDS. The campus group chose the same name as the SDS, although it later offered to change its name. The campus group stated that it supported some, but not all, of the national organization's aims and philosophies and that the national-local relationship was a loose one. The campus group also asserted its independence and stated that it "was not under the dictates of any national organization." *Id.* at 173. The Court held that evidence of affiliation was not a controlling issue. *Id.* at 184. The Government may not constitutionally deny rights solely based on association. *Id.* at 186. Instead, "[t]he Government has the burden of establishing a knowing affiliation with an organization possessing unlawful aims

and goals, and a specific intent to further those illegal aims." *Id.* The Government showed no such intent. The campus group proclaimed its independence, and the national organization promoted diverse views, only some of which called for unlawful action. The campus group only shared some of those beliefs. *Id.* Thus, the relationship between the campus chapter of the SDS and the national organization was insufficient to allow the school to constitutionally deny the campus group's rights. *Id.*

Under the Circuit Court's new branch standard, the *Healy* case would have been decided completely differently. First the Court would have found substantial evidence that the campus group was a branch. Like IARA-USA, the campus group in *Healy* chose the same name as the other entity accused of misdeeds, referred to itself as a "local chapter" and espoused many of the same views and goals. Once the Court found that the campus group was a branch, the First Amendment would have become irrelevant, because there is no constitutional right to incite imminent lawless action – a position that would be imputed to the campus group in the same way that support of terrorism was vicariously imputed to IARA-USA under the branch standard. But the *Healy* Court didn't use such a branch analysis, and instead required the Government to show specific intent to further the other entity's illicit aims. As in *Healy,* IARA-USA has declared its independence. It has also repeatedly and forcefully stated its unequivocal opposition to terrorism. As stated in *Healy*, it is impermissible to violate rights solely based on association; but the Circuit Court's branch standard and circular logic enabled the Government to bypass the associational rights of the First Amendment.

Cases dealing with funding of terrorists are inapposite, because the D.C. Circuit Court's branch standard requires

no showing of funding or material support of terrorists. The constitution protects advocacy, which includes advocating the goals of foreign terrorist organizations, espousing their views, or even being members. *Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1134 (9th Cir. 2000). "They can do so without fear of penalty right up to the line established by *Brandenburg v. Ohio*." *Id.* But when an organization goes beyond mere advocacy, to give material support to terrorists, the activity is no longer protected by the First Amendment. *Id.* Thus, the Government may prohibit the act of giving material support to terrorism, such as giving terrorists weapons or explosives, or the money with which to obtain such weapons. *Id.* at 1133. For example, the Government could constitutionally block the assets of the Holy Land Foundation for Relief and Development because the group acted "for or on behalf" of Hamas, a designated terrorist organization, by funding Hamas, and providing financial support to families of Hamas members. *Holy Land Found. for Relief and Dev. v. Ashcroft,* 219 F. Supp. 2d 57 (D.C. Cir. 2002). The constitutional line of protection lies on the border of advocacy and material support.

The branch standard allows punishment merely for constitutionally protected advocacy. IARA-USA was not accused of funding terrorists, the Sudanese entity was. IARA-USA was not even accused of funding or providing material support to the entity that was accused of funding terrorists. In fact, IARA-USA is not even accused of advocating the Sudanese entity's alleged terrorist-supporting activity. Instead, IARA-USA has been punished for advocating the Sudanese entity's humanitarian mission. It is a paradigmatic case of "guilt by association," which the Supreme Court has long ago rejected, and which the D.C. Circuit should not be permitted to now revive with its ill-conceived branch standard.

C. The Branch Standard Revives Part of the Blocking Scheme that One District Court Has Already Ruled Unconstitutionally Violates Freedom of Association, and Contradicts the Government's Tacit Admission that Evidence of Ownership or Control Is Necessary to Constitutionally Punish an Entity for Mere Affiliation With an SDGT.

The branch standard essentially revives a purely associational basis for blocking that a District Court ruled unconstitutional, and which the Government corrected by adding the very requirements of ownership or control that the D.C. Circuit's branch standard deems irrelevant.

The executive order in which President Bush invoked his authority under IEEPA allows the Secretary of the Treasury to designate as an SDGT anyone acting "for or on behalf of," an SDGT, "owned or controlled by," an SDGT, or "otherwise associated with" an SDGT. Exec. Order No. 13,224, 66 Fed. Reg. 49079 (Sept. 23, 2001) § 1(c)-(d). A District Court ruled that the "otherwise associated" standard is unconstitutional because it is facially vague, giving the Government unfettered discretion in enforcing it, and because it is overbroad in that it punishes mere association with an SDGT. *Humanitarian Law Project v. United States Dep't of Treasury*, 463 F. Supp. 2d 1049 (C.D. Cal. 2006). Noting that punishment for mere association alone is impermissible, and that the critical First Amendment line is drawn between advocacy and action, the Court struck down the standard because "[t]here is nothing in the provision purporting to limit its application only to those instances of association also involving activity, let alone activity that furthers or advances an organization's illegal goals." *Id.* at 1071.

In direct response to the decision, OFAC revised its regulations to define "otherwise associated with" in a constitutionally permissible manner. *Humanitarian Law Project v. United States Dep't of Treasury*, No. CV 05-8047, 2007 U.S. Dist. LEXIS 30537 at *11 (C.D. Cal. April 20, 2007). The new regulation, 31 C.F.R. § 594.316 (2007), reads as follows:

> The term "to be otherwise associated with," as used in § 594.201(a)(4)(ii), means:
>
> (a) To own or control; or
>
> (b) To attempt, or to conspire with one or more persons, to act for or on behalf of or to provide financial, material, or technological support, or financial or other services, to.

On rehearing, the District Court held that the standard as defined by the new regulation, which requires ownership, control, or an act of material support, passes constitutional muster. *Humanitarian Law Project v. United States Dep't of Treasury*, No. CV 05-8047, 2007 U.S. Dist. LEXIS 30537 at *11 (C.D. Cal. April 20, 2007).

The D.C. Circuit Court's branch standard revives the unfettered ability of the Government to punish an entity "otherwise associated with" an SDGT. The Circuit Court's opinion rejects as unnecessary a showing of "ownership or control," or a showing of "material support," which both the Government and the District Court in California agreed were necessary to bring the order into conformity with the First Amendment. Guilt by mere association is no less unconstitutional here, when established judicially by the Circuit Court's branch standard, than it was in *Humanitarian Law Project*, where it was established by executive order.

II. Supreme Court Review is Necessary In Order to Prevent the Executive Branch From Ignoring Fundamental Constitutional Guarantees In Its Quest to Fortify National Security.

There is no doubt that the legislative and executive branches have a legitimate and pressing interest in defending the United States against the threat of terrorism. However, our constitutional system of government that protects civil liberties is one of the greatest assets of the nation we are defending, and those liberties should not be discarded in the process. As the Supreme Court has noted in the past:

> "The imperative necessity for safeguarding these rights to procedural due process under the gravest of emergencies has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis, that there is the greatest temptation to dispense with fundamental constitutional guarantees which, it is feared, will inhibit governmental action. 'The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances.'" *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1961) (quoting *Ex parte Milligan*, 71 U.S. 2 (1866)).

In a case substantively similar to the instant case, the Supreme Court made clear that it would intervene to defend the freedom of association when that right is violated in the name of Congress' legitimate wartime interests in protecting America. *United States v. Robel*, 389 U.S. 258 (1967). In *Robel,* America faced the threat of communism, rather than terrorism. Instead of Specially

Designated Global Terrorists, the Government maintained a registry of "Communist-action organizations." See *id.* at 259-60. Under the Subversive Activities Control Act of 1950, no member of such an organization could work in a defense facility. *Id.* at 260. The Court struck down the legislation as unconstitutional, refusing to read into it requirements of active membership and specific intent to further unlawful goals. *Id.* at 262. The Act literally established guilt by association alone, with no need to prove that an individual's association posed the threat feared by the Government. *Id.* at 265. The statute was also overbroad because it was rendered irrelevant that an individual was a passive member of the communist group, was unaware of the group's unlawful aims, or disagreed with those aims. *Id.* at 266. Chief Justice Warren eloquently discussed the Court's role in such situations:

> Implicit in the term 'national defense' is the notion of defending those values and ideals which set this Nation apart. For almost two centuries, our country has taken singular pride in the democratic ideals enshrined in its Constitution, and the most cherished of those ideals have found expression in the First Amendment. It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties – the freedom of association – which makes the defense of the Nation worthwhile. *Id.* at 264.

Once again, the Government has used its legitimate interest in national defense to justify punishment based on association alone. The Circuit Court's branch standard upheld the blocking of IARA-USA's assets, even though IARA-USA has repeatedly denounced terrorism, and

without any showing that IARA-USA knew of any illicit conduct, intended to further any illicit conduct, provided material support to terrorists, provided material support to the entity accused of providing material support to terrorists, or in any way posed the threat the Government sought to prevent. Such a standard of guilt by association is impermissible.

CONCLUSION

Because the Circuit Court's branch standard is inconsistent with Supreme Court and Circuit Court precedent, violates the United States Constitution, and creates a chilling and dangerous infringement on associational rights that cannot be justified by national security interests, IARA-USA respectfully requests that the United States Supreme Court grant this Petition for Writ of Certiorari. Alternatively, Petitioner requests summary reversal.

Respectfully submitted,

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DATED: May 14, 2007

ISLAMIC AMERICAN RELIEF AGENCY (IARA-USA), APPELLANT v. ALBERTO GONZALES, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE U.S., ET AL., APPELLEES

No. 05-5447

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

477 F.3D 728; 2007 U.S. App. LEXIS 3269

November 20, 2006, Argued
February 13, 2007, Decided

COUNSEL: Shereef H. Akeel argued the cause for appellant. With him on the briefs was John Kenneth Zwerling.

Douglas Letter, Litigation Counsel, U.S. Department of Justice, argued the cause for appellees. With him on the brief was Peter D. Keisler, Assistant Attorney General. Sharon Swingle, Attorney, entered an appearance.

JUDGES: Before: SENTELLE and TATEL, Circuit Judges, and EDWARDS, Senior Circuit Judge. Opinion for the Court filed by Circuit Judge SENTELLE.

OPINION BY: SENTELLE

OPINION:

SENTELLE, *Circuit Judge*: The Islamic American Relief Agency ("IARA-USA"), based in Columbia, Missouri, challenges the district court's decision upholding the blocking of its assets. The government concluded that the organization was a branch office of a Specially Designated Global Terrorist and invoked its authority under anti-terrorism laws to block IARA-USA assets. In this appeal, IARA-USA contends that the district court erroneously

held that the record supports the government's conclusion, and that it erroneously dismissed and entered summary judgment for defendants on IARA-USA's claims under the Administrative Procedure Act and the Constitution. IARA-USA also argues that it should have been permitted to amend its complaint to request access to its blocked funds for payment of attorneys' fees. Because we conclude that the designation was supported by the record and was not contrary to law, we affirm the district court's disposition of the case, but on the question of attorneys' fees we remand for further proceedings.

I

In 1985, a Sudanese immigrant founded IARA-USA as the Islamic African Relief Agency. Since then, the entity has engaged in humanitarian activities around the world, often in partnership with similar organizations. In 2000, IARA-USA changed its name from the "Islamic *African* Relief Agency" to the "Islamic *American* Relief Agency" (emphasis added). Meanwhile, the entity in Sudan calling itself the Islamic African Relief Agency ("IARA") continued to exist under that name.

On October 13, 2004, the Office of Foreign Assets Control in the Department of the Treasury ("OFAC") designated IARA as a Specially Designated Global Terrorist ("SDGT"). The designation was based on OFAC's conclusion that IARA "provides financial support or other services to persons who commit, threaten to commit or support terrorism" in violation of anti-terrorism laws. Although IARA-USA was not independently designated, OFAC considered it to be the United States branch of IARA and included it in the blocking notice. This meant

that none of IARA-USA's financial assets or property could be "transferred, withdrawn, exported, paid, or otherwise dealt in without prior authorization from OFAC." IARA-USA could not receive "any contribution of funds, goods, or services," nor could it continue to use its offices or remove any items of corporate property. Any violation of the blocking notice could subject IARA-USA to criminal and civil penalties.

IARA-USA immediately contested the blocking, maintaining that it is a separate entity from IARA. It requested that OFAC review the designation and permit IARA-USA to access its blocked funds for the limited purpose of paying attorneys' fees. In late December 2004, having failed to persuade OFAC to unblock its assets, IARA-USA filed a complaint in district court, naming as defendants the Attorney General, the Secretary of the Treasury, and other unidentified FBI agents and Treasury personnel.[1] Relevant to this appeal, it claimed that (1) the blocking is unsupported by the record and thus violates the APA and the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1707; (2) the blocking violates IARA-USA's constitutional rights of equal protection, free exercise of religion, and free association; and (3) IARA-USA should be permitted to pay attorneys' fees from the blocked funds. In a memorandum opinion and order issued on September 15, 2005, the district court dismissed or entered summary judgment in favor of defendant on all claims. *Islamic Am. Relief Agency v. Unidentified FBI Agents,* 394 F. Supp. 2d 34 (D.D.C. 2005) (*"IARA-USA"*). The district court held that the record supported OFAC's

[1] For simplicity, we refer to the remaining defendants collectively as "the Government."

conclusion that IARA-USA was a branch of IARA, and that the blocking was proper under applicable laws and the Constitution. It also denied the motion to access blocked funds for attorneys' fees.

In this appeal, IARA-USA argues that the district court erred in rejecting the three arguments described above, and that it erred in failing to ensure that the Government complied with an internal regulation requiring it to declassify record evidence and in denying discovery before entering summary judgment. IARA-USA does not challenge the district court's ruling on its other claims.

II

We note at the outset that the designated entity, IARA, is not a party to this case, and IARA-USA does not challenge the evidentiary basis for the designation of its alleged parent. Rather, the question here is whether the record supports OFAC's conclusion that IARA-USA is a branch of IARA. If so, as IARA-USA conceded at oral argument, OFAC's blocking of its assets was a proper consequence of the designation.

We review de novo the district court's entry of summary judgment in favor of the defendants. We will affirm if, viewing all evidence in the light most favorable to IARA-USA, "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c); *see McCready v. Nicholson,* 465 F.3d 1, 7 (D.C. Cir. 2006). A dispute over a material fact is "genuine" if the evidence is "such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 7 (quoting *George v. Leavitt,* 366 U.S. App. D.C. 11, 407 F.3d 405, 410 (D.C. Cir. 2005)). Under the

same de novo standard, the dismissal of claims under Federal Rule of Civil Procedure 12(b)(6) will be affirmed if "it appears beyond doubt that [IARA-USA] can prove no set of facts in support of [its] claim which would entitle [it] to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957). We accept the complaint's factual allegations as true and give IARA-USA the benefit of all inferences that can reasonably be drawn therefrom. *Browning v. Clinton,* 352 U.S. App. D.C. 4, 292 F.3d 235, 242 (D.C. Cir. 2002). This Court need not, however, accept inferences that are unsupported by the facts set out in the complaint, nor will it accept legal conclusions cast in the form of factual allegations. *Kowal v. MCI Communications Corp.,* 16 F.3d 1271, 1276, 305 U.S. App. D.C. 60 (D.C. Cir. 1994).

Our review of an SDGT designation falls under the APA, and thus its highly deferential standard of review applies. *See Holy Land Found. for Relief & Dev. v. Ashcroft,* 357 U.S. App. D.C. 35, 333 F.3d 156, 162 (D.C. Cir. 2003). Under that standard, we will set aside OFAC's action only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). We may not substitute our judgment for OFAC's, but we will require it to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983) (internal quotation marks omitted); *see also Cellular Telecomms. & Internet Ass'n v. FCC,* 356 U.S. App. D.C. 238, 330 F.3d 502, 507 (D.C. Cir. 2003). Thus, with respect to the APA claims, if OFAC's actions were not arbitrary and capricious and were based on

substantial evidence, we must affirm the district court's decision. 5 U.S.C. § 706(2)(A); *Holy Land,* 333 F.3d at 162.

A

This case is the first in this Court challenging an SDGT designation based on a branch relationship with an entity that supports terrorists. Our prior cases involved entities that directly supported terrorists. IARA-USA suggests that because of this factual difference, we should review the blocking as we would review an alias designation in a Foreign Terrorist Organization ("FTO") case. In those cases, we require evidence that the designated entity "so dominates and controls" the alleged alias entity that they can be considered one and the same. *Nat'l Council of Resistance of Iran v. Dep't of State,* 362 U.S. App. D.C. 143, 373 F.3d 152, 157 (D.C. Cir. 2004) (*"NCRI"*). On IARA-USA's theory, then, blocking its assets based on the designation of IARA was proper only if IARA "dominates and controls" IARA-USA. The Government disagrees, arguing that the alias test is not applicable here because this blocking was not based on an alias theory. It urges instead that the blocking may stand if there is sufficient evidence that IARA-USA and IARA are the same organization, even in the absence of evidence that one controls the other.

We conclude that the Government has the better argument. To determine whether the evidence is sufficient, we must employ a test that reflects the theory on which the assets were blocked. The "dominates and controls" test is appropriate for reviewing the existence of a principal-agent relationship because, where there is sufficient evidence to find an agency relationship, substantial evidence of the principal's unlawful activity is sufficient to

justify the designation or blocking of the agent. *See NCRI,* 373 F.3d at 157 (concluding that the "dominates and controls" test is an appropriate basis for upholding an alias designation, because of the "ordinary principle[] of agency law" that "where a corporate entity is so extensively controlled by its owner that a relationship of principal and agent is created . . . one may be held liable for the actions of the other") (internal quotation marks and citation omitted). In this case, however, OFAC's theory was that IARA-USA and IARA, along with other branch offices, comprised a single global organization. The Government argues that their relationship, therefore, is more accurately described as one between different offices of the same entity. It follows that, if the record contains substantial evidence that IARA-USA is a branch of IARA, then it was proper for OFAC to subject IARA-USA to the blocking as a result of IARA's designation.

The district court applied the proper standard. It entered summary judgment on the APA claims, concluding that the record contained "substantial evidence" to support OFAC's conclusion that IARA-USA "is related and connected to the IARA," and accordingly that the designation was not arbitrary and capricious. *IARA-USA,* 394 F. Supp. 2d at 45-46. As did the district court, we shall limit our review of the designation to the administrative record. *Holy Land,* 333 F.3d at 162.

With this framework in mind, we turn to the unclassified record. While the record contains a great number of documents, we discuss here only a sampling of the most pertinent. IARA-USA was founded by an immigrant from Sudan, the site of IARA's offices, and was incorporated with a name identical to IARA's from its founding until 2000, when IARA-USA made the minor change of replacing "African" in

its name with "American." IARA-USA's Articles of Incorporation describe it as "Islamic African Relief Agency United States Affiliate" and include the purpose of "effect[ing] the Objectives and Means of the Islamic African Relief Agency as set forth in its Constitution." In the event of IARA-USA's dissolution, the Articles of Incorporation provided that IARA, among other entities, should receive its assets.

Since its founding, IARA-USA has continued to engage in conduct that evinces a branch relationship with IARA. In 1998, for example, IARA-USA applied to the Treasury Department for a license to transfer funds to "Islamic African Relief Agency, Sudan," in which it described itself as "The Islamic African Relief Agency, United States Affiliate." It described "the Islamic African Relief Agency, Sudan" as its "partner in Sudan." In a letter to the *Washington Times* on October 10, 1995, IARA-USA's Executive Director identified himself as speaking on behalf of "IARA and its partners," implicitly accepted the newspaper's characterization of IARA as the "Khartoum-based 'Islamic Relief Agency,'" and acknowledged IARA's "branch offices in the United States" and other countries. Solicitation materials used by IARA-USA stated that its "international headquarters are in Khartoum, Sudan." Additionally, IARA-USA maintained financial connections with at least one other IARA branch and its address was listed on IARA websites as a United States branch office.

IARA-USA denies that this evidence reveals a branch relationship. The initial identity and current similarity in the entities' names, it claims, is purely coincidental: the founder of IARA-USA, though aware of IARA's existence, chose the name because it was descriptive of the organization's mission. Although IARA-USA offers no explanation for the references to IARA in its Articles of Incorporation,

it nonetheless categorically denies that the organization was founded as a branch.

IARA-USA's arguments fail in the face of clear and substantial evidence in the record. The evidence supports the conclusion that, at its founding, IARA-USA considered itself a branch of IARA. An entity's "genesis and history" may properly be considered by OFAC in making the designation or blocking, at least where the ties have not been severed. *Holy Land,* 333 F.3d at 162. Although it is true that IARA-USA subsequently amended its name, there is no indication that it severed the relationship, particularly in light of the more recent evidence discussed above. Indeed, since IARA-USA itself does not concede that it was ever a branch of IARA, it cannot argue that the name change effected a severance of the relationship. Rather, IARA-USA would have us believe that the amended name, as the initial name, was chosen simply because it was descriptive, without any intention of aligning with IARA. We need not pass on the credibility of this explanation, however, because we hold that the other evidence in the record is sufficient to support OFAC's interpretation of the evidence.

We acknowledge that the unclassified record evidence is not overwhelming, but we reiterate that our review – in an area at the intersection of national security, foreign policy, and administrative law – is extremely deferential. *Cf. Holy Land,* 333 F.3d at 166 (noting the unique nature of reviewing an SDGT designation as "involving sensitive issues of national security and foreign policy"); *Humanitarian Law Project v. Reno,* 205 F.3d 1130, 1137 (9th Cir. 2000) (noting that, where a "regulation involves the conduct of foreign affairs, we owe the executive branch even more latitude than in the domestic context" and

stating that the high degree of judicial deference to the decision to designate an entity as an FTO "is a necessary concomitant of the foreign affairs power"). Under that standard, the record – containing various types of evidence from several different sources, and covering an extended period of time – provides substantial evidence for the conclusion that IARA-USA is part of IARA. Furthermore, although we deem it unnecessary to sustain OFAC's actions, the classified record contains extensive evidence that IARA-USA is a branch of IARA.

OFAC's conduct was also lawful under the relevant statute and Executive Orders. In the wake of the attacks of September 11, 2001, the President invoked the authority of the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1707 ("IEEPA") by declaring a national emergency with respect to the "unusual and extraordinary threat to national security" posed by terrorists. *Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,* Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001), as amended by Exec. Orders No. 13,268, 67 Fed. Reg. 44,751 (July 2, 2002) and No. 13,372, 70 Fed. Reg. 8499 (Feb. 16, 2005). In that Order, the President described the types of conduct that could subject an entity to blocking of its assets, such as providing financial support to terrorists. He named a number of entities whose assets would be blocked immediately, and authorized the Treasury Department to designate additional entities that it determines are within the purview of the Order. Exec. Order No. 13,224, §§ 1, 7, 66 Fed. Reg. at 49,079, 49,081.

IARA-USA argues that OFAC cannot block an entity's assets unless it determines that the entity itself poses an "unusual and extraordinary threat to national security."

The district court rejected this argument, holding that the threat need not be found with regard to each individual entity. *IARA-USA*, 394 F. Supp. 2d at 46. We agree with the district court. The President may exercise his authority under the IEEPA "to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." 50 U.S.C. § 1701(a). Thus, once the President has declared a national emergency, the IEEPA authorizes the blocking of property to protect against that threat. *Id.* § 1702(a)(1)(B). It is that authority OFAC invoked when it blocked IARA-USA's assets. We hold that the district court correctly dismissed this claim because IARA-USA could prove no set of facts that would entitle it to relief.

B

We turn next to IARA-USA's claims that the blocking violated its rights under the Constitution. As an initial matter, we note that IARA-USA's constitutional claims rest on a misinterpretation of OFAC's basis for the designation. IARA-USA argues that the blocking was unconstitutional because the Government has not shown that IARA-USA is controlled or dominated by IARA. But as explained above, OFAC's basis for the blocking was that IARA-USA functions as a branch of IARA. Thus, the "dominates and controls" test is not relevant to whether the blocking was constitutional. And since we have concluded that there was substantial evidence that IARA-USA was a branch of IARA, these constitutional claims lose their footing. As we have noted previously, "there is no

First Amendment right nor any other constitutional right to support terrorists." *Holy Land,* 333 F.3d at 166; *see also Humanitarian Law Project,* 205 F.3d at 1133 ("[T]here is no constitutional right to facilitate terrorism" with materials or funding.).

Our analysis of IARA-USA's constitutional arguments is informed by our recent decision in *Holy Land,* 333 F.3d at 164-67. In that case, Holy Land Foundation ("HLF") challenged its designation as an SDGT under the First, Fourth, and Fifth Amendments. *Id.* The district court rejected HLF's First and Fifth Amendment claims, and we affirmed, on the basis that "the law is established that there is no constitutional right to fund terrorism." *Id.* at 165. Thus, where an organization is found to have supported terrorism, government actions to suspend that support are not unconstitutional. *Id.* (noting that HLF could not have "produced evidence upon which a reasonable trier of fact could have found that the designation and the blocking of assets violated its First or Fifth Amendment rights" because "there is no constitutional right to fund terrorism" and the record evidence established that HLF did fund a terrorist organization).

IARA-USA contends that OFAC violated its right to equal protection under the Fifth Amendment by singling it out as a Muslim organization. As evidence that OFAC treated it differently than similar organizations, IARA-USA notes that UNICEF's funds were not blocked even though it also provided financial support to IARA. The district court entered summary judgment after concluding that IARA-USA had not shown that it was similarly situated to UNICEF. *IARA,* 394 F. Supp. 2d at 50-51. As the district court noted, to survive summary judgment IARA-USA must show that it was treated differently than

a similar organization with similar ties to an SDGT. *Cf. Plyler v. Doe,* 457 U.S. 202, 216, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982) ("[T]he Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." (quoting *Tigner v. Texas,* 310 U.S. 141, 147, 60 S. Ct. 879, 84 L. Ed. 1124 (1940))). IARA-USA asserts that UNICEF entered into a contract in which it agreed to provide financial support to IARA. But a single contact of this nature does not begin to approximate the extensive relationship between IARA-USA and IARA. As the district court held, IARA-USA and UNICEF are not similarly situated, and as a result their disparate treatment by OFAC cannot itself support a claim that IARA-USA has been denied equal protection of the law. IARA-USA's equal protection claim thus was properly rejected by the district court.

IARA-USA also argues that OFAC violated its rights of association and free exercise of religion under the First Amendment. Its freedom of association claim is that the blocking inhibits its ability to engage in the associational activity of making financial contributions and that its association, even with an unpopular entity, cannot form the basis of the decision to block its assets. Following *Holy Land,* the district court dismissed the claim, concluding that the blocking did not implicate IARA-USA's association rights because it did not prevent or punish the associational activity of IARA-USA, but rather was directed at its funding of terrorists, as a branch of IARA. *IARA-USA,* 394 F. Supp. 2d at 54. We agree with the district court. Our decision in *Holy Land* relied on the Ninth Circuit's recent decision in *Humanitarian Law Project. Holy Land,* 333 F.3d at 166 (holding, with regard to HLF's freedom of association claim, "that there is no First Amendment right

nor any other constitutional right to support terrorists" with funding) (citing *Humanitarian Law Project,* 205 F.3d at 1133). In *Humanitarian Law Project,* entities designated as FTOs argued that preventing them from making donations in support of humanitarian and political activities violated their First Amendment right of association, at least where it was not shown that they intended their donations to support unlawful activities. 205 F.3d at 1133. The Ninth Circuit noted that freedom of association is implicated where people are punished merely for "membership in a group or for espousing its views, whereas the statute in question only prohibited the act of giving material support." *Id.* (citing *NAACP v. Claiborne Hardware Co.,* 458 U.S. 886, 920, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982)). Similarly, it held that the requirement to show intent to aid unlawful acts was not applicable in the context of donations to terrorist groups, because the money could be used for unlawful activities regardless of donor intent. *Id.* at 1133-34.

Here, as in *Holy Land,* we adopt the Ninth Circuit's reasoning. The blocking was not based on, nor does it prohibit, associational activity other than financial support. The blocking of IARA-USA's assets does not punish advocacy of IARA's or any other entity's goals. *See Humanitarian Law Project,* 205 F.3d at 1133-34 (distinguishing financial support from advocacy and noting that, just as "there is no constitutional right to facilitate terrorism by giving terrorists the weapons and explosives with which to carry out their grisly missions," neither is there any "right to provide resources with which terrorists can buy weapons and explosives"). We hold that OFAC's blocking of IARA-USA's assets does not implicate IARA-USA's First Amendment right of association.

Nor is the Government required to show that IARA-USA funded terrorist organizations with an intent to aid their unlawful activities. Although the Supreme Court has previously imposed such an intent requirement, it is limited to cases in which liability was imposed by reason of association alone. *See Healy v. James,* 408 U.S. 169, 186, 92 S. Ct. 2338, 33 L. Ed. 2d 266 (1972) (noting that where First Amendment rights are denied based on "guilt by association alone, without (establishing) that an individual's association poses the threat feared by the Government ... [t]he government has the burden of establishing a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims") (internal quotation marks and citations omitted). In this case, however, OFAC's decision to block IARA-USA's assets was not based on association. Rather, as we have explained above, the decision was based on OFAC's finding that IARA-USA is a branch of an SDGT. Thus we do not require a showing that IARA-USA intended its funding to support terrorist activities. *Cf. Humanitarian Law Project,* 205 F.3d at 1133-34 ("We therefore do not agree ... that the First Amendment requires the government to demonstrate a specific intent to aid an organization's illegal activities before attaching liability to the donation of funds.").

As to IARA-USA's free exercise of religion claim, we conclude that the district court properly entered summary judgment for defendants. IARA-USA argues that the blocking "substantially burdens" the religious exercise of its members because they intended their donations to fulfill their religious obligation to engage in humanitarian charitable giving. Blocking those funds before they could be distributed, IARA-USA contends, interfered with that

religious expression. As we explained in *Holy Land,* "[a]cting against the funding of terrorism does not violate the free exercise rights protected by . . . the First Amendment. There is no free exercise right to fund terrorists." 333 F.3d at 167. We have already concluded that there was sufficient evidence in the administrative record that IARA-USA did, through its relationship with IARA, support terrorism. We thus affirm the district court's dismissal of IARA-USA's free exercise claim.

IARA-USA argues that, had it been permitted to engage in additional discovery on its constitutional claims, it might have found evidence sufficient to survive summary judgment. The district court held that discovery was not warranted because, based on the record presented, discovery would not have produced any evidence to create a genuine factual dispute and thus could not have changed its disposition of the claims. *IARA-USA,* 394 F. Supp. 2d at 43 n.9. "The district court has broad discretion in its handling of discovery, and its decision to allow or deny discovery is reviewable only for abuse of discretion." *Brune v. IRS,* 274 U.S. App. D.C. 89, 861 F.2d 1284, 1288 (D.C. Cir. 1988) (quoting FED. R. CIV. P. 26(b)(1) (internal quotation marks and citation omitted)). The district court's review of the APA claims were limited to the administrative record, but IARA-USA "had ample opportunity" to – and indeed did – come forward with additional evidence during the administrative proceeding to support its other claims. *IARA-USA,* 394 F. Supp. 2d at 43 n.9. *See Holy Land,* 333 F.3d at 166 (noting that there was an adequate record where the designated entity had "every opportunity and incentive to produce the evidence sufficient to rebut" the evidence supporting the designation in order to create a genuine factual dispute). We thus conclude that the

district court did not abuse its discretion in denying discovery.

C

IARA-USA also argues that the district court erred in failing to ensure that the Government complied with an internal regulation governing the declassification of record material in judicial proceedings. The regulation, promulgated by the Department of Justice, states in relevant part that when that agency is required "to produce classified information" in litigation, it "shall immediately determine from the agency originating the classified information whether the information can be declassified." 28 C.F.R. § 17.17(a)(1). In a hearing in early 2005, the district court accepted DOJ's representation that it had complied with the regulation. Even if it had not, the regulation provides no private right of action, as IARA-USA itself conceded at oral argument before this Court. *Cf. Alexander v. Sandoval,* 532 U.S. 275, 285-86, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001) (noting, in the context of anti-discrimination legislation, that a regulation does not make actionable conduct that is not prohibited by the statute). We thus find no basis on which we could conclude that the district court erred with respect to the agency's compliance with its internal regulation.

* * *

Finally, IARA-USA maintains that the district court erred in denying its motion to compel payment of attorneys' fees. The blocking notice stated that OFAC would consider "requests for specific licenses to ameliorate the effects" of the blocking, including permitting "the payment from blocked funds . . . of attorneys' fees and expenses

related to legal representation of the organization in this matter." In its motion, IARA-USA argued that OFAC acted arbitrarily and capriciously in denying its request to access the blocked funds for the purpose of paying attorneys' fees connected with the litigation. The district court denied the motion, concluding that the motion raised a new claim that was collateral to the complaint and thus that the issue was not properly before the court. *IARA-USA,* 394 F. Supp. 2d at 39 n.4. On appeal, IARA-USA concedes that the issue was not raised in its complaint, but argues that the district court should have permitted it to amend its complaint. Indeed, it notes, it requested leave to amend its complaint in its motion to compel attorneys' fees: "If the Court adopts Defendants' argument, then by virtue of this Motion, Plaintiff seeks leave to appeal to amend its Complaint for OFAC's wrongful denial of its attorney fees, in violation of APA." The district court nowhere addressed the request for leave to amend, though this is hardly surprising as this one sentence was buried in an eight-page motion. *IARA-USA,* 394 F. Supp. 2d at 39 n.4 (denying the motion to compel without reference to its alternative request for leave to amend the complaint).

Leave to amend one's complaint is liberally permitted. FED. R. CIV. P. 15(a) (leave to amend a pleading "shall be freely given when justice so requires"); *Foman v. Davis,* 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962). We also note that there is some evidence in the record suggesting that IARA-USA's decision to omit the issue from its complaint and the district court's decision to deny the motion may have been based on communications by OFAC implying that it intended to grant the request. IARA-USA's request for leave to amend, therefore, should be considered. We express no opinion on how the district

court should rule, but we believe it should consider the motion. We therefore remand on this issue in order to give the district court an opportunity to consider the motion for leave to amend.

III

As the district court held, the blocking of IARA-USA's assets was not unlawful. OFAC's determination that IARA-USA functions as a branch of IARA was supported by substantial evidence in the unclassified record, and was proper under the relevant anti-terrorism laws, the APA and the Constitution. Accordingly, IARA-USA's claims are without merit and were properly dismissed or disposed of on summary judgment by the district court. The judgment of the district court is affirmed in all respects except that portion relating to IARA-USA's motion for leave to amend its complaint. On that issue, the case is remanded to the district court for further proceedings.

So ordered.

ISLAMIC AMERICAN RELIEF AGENCY, Plaintiff, v. UNIDENTIFIED FBI AGENTS, et al., Defendants.

Civil Action No. 04-2264 (RBW)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

394 F. Supp. 2d 34; 2005 U.S. Dist. LEXIS 21570

September 15, 2005, Decided

COUNSEL: For ISLAMIC AMERICAN RELIEF AGENCY, (IARA-USA), Plaintiff: Shereef Akeel, MELAMED, DAILEY & AKEEL, P.C., Huntington Woods, MI.

For JOHN ASHCROFT, In his official capacity as Attorney General of the U.S., PAUL SCHULP, Defendants: Andrea Gacki, Carlton Greene, U.S. DEPARTMENT OF JUSTICE, Washington, DC.

For JOHN SNOW, In his official capacity as Secretary of the Department of Treasury, UNIDENTIFIED FBI AGENTS, UNIDENTIFIED DEPARTMENT OF TREASURY PERSONNEL, Defendants: Andrea Gacki, U.S. DEPARTMENT OF JUSTICE, Washington, DC.

JUDGES: REGGIE B. WALTON, United States District Judge.

OPINION BY: REGGIE B. WALTON

OPINION:

MEMORANDUM OPINION[1]

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[1] The contents of this memorandum opinion contains only information that is already in the public domain, i.e., the plaintiff's complaint, the defendants' unclassified papers, and the unclassified administrative record.

On December 30, 2004, the plaintiff commenced this action claiming violations by the defendants of the First, Fourth and Fifth Amendment to the United States Constitution, the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1701 *et seq.* (2000), and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.* (2003). Complaint ("Compl.") ¶ 1. On that same day, the plaintiff filed a motion for a preliminary injunction, which this Court denied on February 18, 2005. February 18, 2005 Order. Currently before the Court is (1) the Defendants' Motion to Dismiss and for Summary Judgment[2] and (2) Defendant Paul Schlup's Motion to Dismiss.[3] For the reasons set forth below, the Court grants both motions.[4]

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[2] The following papers have been submitted to the Court in connection with this motion: (1) Memorandum in Support of Defendants' Motion to Dismiss and for Summary Judgment ("Defs.' Mem."); (2) Plaintiff's Answer to Defendants' Motion to Dismiss and for Summary Judgment ("Pl.'s Opp'n"); and (3) Reply in Support of Defendants' Motion to Dismiss and for Summary Judgment ("Defs.' Reply").

[3] The following papers have been submitted to the Court in connection with this motion: (1) Memorandum of Points and Authorities in Support of Defendant Paul Schlup's Motion to Dismiss ("Schlup's Mem."); (2) the Plaintiff's Answer to Defendant Paul Schlup's Motion to Dismiss ("Pl.'s Opp'n to Schlup's Mot."); and (3) Reply in Support of Defendant Paul Schlup's Motion to Dismiss ("Schlup's Reply").

[4] Also before the Court is the Plaintiff's Motion for Reconsideration and to Amend Judgment. This motion is directed at the Court's Order issued in response to the plaintiff's motion for a preliminary injunction. Because this Court concludes that the defendants are entitled to summary judgment or dismissal of all the plaintiff's claims, the plaintiff's motion for reconsideration must be denied. In addition, the plaintiff has filed a Motion to Compel Defendants to Pay Attorney Fees ("Pl.'s Mot."). This motion challenges the decision of the United States Department of the Treasury, Office of Foreign Assets Control ("OFAC"), denying the plaintiff access to blocked funds to pay its attorney's fees. Pl.'s Mot. at 2-3. The plaintiff's motion requires little

(Continued on following page)

I. Background

(A) Factual Background

The Islamic African Relief Agency, now the Islamic American Relief Agency ("IARA-USA"), based in Columbia, Missouri, was established in 1985 as a nonprofit humanitarian relief organization under section 501(c)(3) of the United States Internal Revenue Code. Complaint ("Compl.") ¶ 8; Pl.'s Opp'n at 6. Specifically, the IARA-USA has "provided charitable and humanitarian aid to refugees, orphans, victims of human and natural disasters, and other poor and needy persons and entities throughout the world, without regard to faith or political affiliation." Compl. ¶ 9. At the time the IARA-USA was incorporated in the United States, an organization based in Sudan also existed under the name Islamic African Relief Agency ("IARA").[5] Pl.'s Opp'n at 6. The plaintiff posits that the two organizations are completely separate entities and are in no way related. Compl. ¶¶ 12, 28. In 2000, the IARA-USA began expanding and providing humanitarian relief to other countries outside of the African continent. Pl.'s Opp'n at 7. Thus, to reflect its broader mission, the plaintiff changed its name to the Islamic American Relief Agency ("IARA-USA"). *Id.*

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discussion. The plaintiff concedes that its complaint lacks any facts or claims to support this allegation as this decision to deny access to the blocked funds occurred following the filing of the present action. Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motion to Compel Payment of Attorney's Fees at 1. As such, this claim is not properly before the Court and must be denied. *See Johnson v. DiMario*, 14 F. Supp. 2d 107, 111 (D.D.C. 1998) (noting that a new claim must be asserted in an amended complaint pursuant to Federal Rule of Civil Procedure 15).

[5] The Court will refer to the United States entity as "IARA-USA," and the Sudan-based organization as "IARA."

On October 13, 2004, pursuant to Global Terrorism Executive Order No. 13,224, and the IEEPA, the United States Department of the Treasury, Office of Foreign Assets Control ("OFAC"), designated the IARA, including the IARA-USA, as a Specially Designated Global Terrorist ("SDGT"), and blocked the assets of the IARA, along with the assets of five of its senior officials.[6] Compl. ¶¶ 23-26; Compl., Ex. A; Pl.'s Opp'n at 11. The designation was based on evidence, both classified and unclassified, that purportedly demonstrated that the IARA "assists in, sponsors, or provides financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism. . . . " Exec. Order. 13,224, § 1(d)(i), 66 Fed. Reg. 49,079, at 49,080 (Sept. 23, 2001). Based upon the blocking notice against the IARA, the property of the IARA-USA was also blocked and its bank accounts frozen. Compl. ¶ 29. The OFAC blocking notice stated that the IARA-USA could challenge the blocking order by writing a letter to the Director of the OFAC. Compl., Ex. A at 2. In addition to the blocking notice, the plaintiff posits that the defendants illegally obtained a sealed search warrant, and seized and removed property from the IARA-USA office in Columbia, Missouri. Compl. ¶¶ 31-32.

On December 30, 2004, the plaintiff filed this action challenging the OFAC's decision to block its assets. In particular, the plaintiff brings this action against John Snow, Secretary of the Treasury and Alberto Gonzales,

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[6] Specifically, those officials were: Dr. Mohammed Ibrahim Sulaiman, Jaffar Ahmad, Abdullah Makki, Abdul Aziz Abba Karmuhamad, Khalid Ahmed Jumah Al-Sudani, and Abrahim Buisir. Compl. ¶ 26 & Ex. B.

Attorney General of the United States,[7] in their official capacities, and various unidentified Federal Bureau of Investigation ("FBI") Agents, Paul Schlup, a Special Agent with the Internal Revenue Service, and other unidentified Department of the Treasury employees both in their individual and official capacities. Compl. ¶¶ 13-21. The plaintiff's complaint asserts nine separate counts against the various defendants. Specifically, the plaintiff alleges violations of the APA, the First, Fourth and Fifth Amendments to the United States Constitution, Civil Liability for False Affidavit, and violations of 42 U.S.C. § 1985(3). Compl. ¶¶ 45-101. Moreover, the plaintiff seeks monetary damages pursuant to *Bivens v. Six Unknown Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388, 29 L. Ed. 2d 619, 91 S. Ct. 1999 (1971) against the individual defendants.

(B) Statutory and Regulatory Background

(1) International Emergency Economic Powers Act ("IEEPA")

Through much of the Twentieth century, the United States utilized economic sanctions as a tool of foreign policy pursuant to the Trading With the Enemy Act ("TWEA"). Passed in 1917, and amended in 1933, the TWEA granted the President "broad authority" to "investigate, regulate, . . . prevent or prohibit . . . transactions" in times of war or declared national emergencies. 50 U.S.C. app. § 5(b). In 1977, through the passage of the IEEPA, Congress further amended the TWEA. The IEEPA delineates "the President's authority to regulate international economic

[7] Pursuant to Fed. R. Civ. P. 25, the Court has substituted Alberto Gonzales, the current Attorney General, as the proper defendant, for John Ashcroft, who was the Attorney General when this action was filed.

transactions during wars or national emergencies." S. Rep. No. 95-466 at 2. The IEEPA limited the TWEA's application to periods of declared wars and to certain existing TWEA programs, while the IEEPA was applicable during other times of declared national emergencies. *See Regan v. Wald*, 468 U.S. 222, 227-28, 82 L. Ed. 2d 171, 104 S. Ct. 3026 (1984). Under the IEEPA, the President can declare a national emergency "to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States." 50 U.S.C. § 1701(a). The IEEPA authorizes the President to

> investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States. . . .

50 U.S.C. § 1702(a)(1)(B).[8] However, the IEEPA specifically prohibits the President from regulating or prohibiting

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[8] In October 2001, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act"), which amended the IEEPA. These amendments added, among other things, authority to block assets pending an investigation, and provided that, in case of judicial review of an IEEPA blocking order, an agency record containing classified information "may be submitted to the reviewing court ex parte and in camera." 50 U.S.C. § 1702(c) (emphasis added). Pursuant to this provision, this Court has reviewed the classified portions of the agency record in this case.

directly or indirectly "donations, by persons subject to the jurisdiction of the United States, of articles such as food, clothing, and medicine . . . except to the extent that the President determines that such donations . . . would seriously impair his ability to deal with any national emergency. . . . " 50 U.S.C. § 1702(b)(2).

(2) Executive Order No. 13,224

Following the September 11, 2001 terrorist attacks on the United States, President Bush, on September 23, 2001, issued Executive Order 13,224, declaring a national emergency with respect to the "grave acts of terrorism . . . and the continuing and immediate threat of further attacks on United States nationals or the United States." Exec. Order. 13,224, 66 Fed. Reg. 49,079, at 49,079 (Sept. 23, 2001). Through this Executive Order, President Bush invoked the authority granted to him under the IEEPA, *id.* § 1, and blocked all property and interests in property of twenty-seven foreign terrorist, terrorist organizations, and their supporters, each which were designated as SDGTs, *id.*, annex.

The Executive Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to designate additional SDGTs whose property or interests in property should be blocked because they "act for or on behalf of" or are "owned or controlled by" designated terrorists, or because they "assist in, sponsor, or provide . . . support for," or are "otherwise associated" with them. *Id.* § 1(c)-(d). Moreover, the Executive Order also authorizes the Secretary of Treasury to "employ all powers granted to the President by IEEPA and [the United National Participation Act

('UNPA')]" and to promulgate rules and regulations to carry out the purposes of the Order and to re-delegate such functions if he chose to do so. *Id.* § 7, 66 Fed. Reg. at 49,081. Moreover, the Executive Order states:

> because of the ability to transfer funds or assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Id. § 10. In addition, section 4 of the Executive Order states that "the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. § 1702(b)(2)) . . . would seriously impair my ability to deal with the national emergency declared in this order . . . and [therefore the President] . . . prohibits such donations. . . . " *Id.* § 4, 66 Fed. Reg. at 49,080.

(3) Executive Order 13,372

On February 16, 2005, President Bush issued Executive Order 13,372. This Executive Order amended Executive Order 13,224 to make clear that the IEEPA's humanitarian aid exception does not authorize entities blocked pursuant to Executive Order 13,324 to donate humanitarian aid articles to anyone, even unblocked persons, without prior authorization from the OFAC. Exec. Order No. 13,372, 70 Fed. Reg. 8499 (Feb. 16, 2005). Specifically, Executive Order 13,372 states:

> I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of, any persons determined to be subject to this order would seriously impair my ability to deal with the national emergency declared in this order, and would endanger Armed Forces of the United States that are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances, and I hereby prohibit such donations as provided by section 1 of this order.

Id. § 1

(4) Regulations

The OFAC has, pursuant to a delegation of authority by the Secretary of the Treasury, promulgated record-keeping and procedural regulations applicable to their various sanctions programs. *See, e.g.*, 31 C.F.R. pt. 500. These regulations permit a designated or blocked individual or entity to seek a license from the OFAC to engage in any transaction involving blocked property. 31 C.F.R. § 501.801-802. In addition, the regulations establish a procedure to allow a person to "seek administrative reconsideration" of a designation or blocking if a party believes an error has been made. *Id.* § 501.806-807. Specifically, an applicant seeking administrative reconsideration is permitted to submit materials to contest the designation, and the OFAC may request additional materials from the applicant in assessing the request for reconsideration. *Id.*

II. The Defendants' Summary Judgment and Dismissal Motion

(A) Standards of Review

On a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), this Court must construe the allegations and facts in the complaint in the light most favorable to the plaintiff and must grant the plaintiff the benefit of all inferences that can be derived from the facts alleged. *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957); *Barr v. Clinton*, 361 U.S. App. D.C. 472, 370 F.3d 1196, 1199 (D.C. Cir. 2004) (*citing Kowal v. MCI Communications Corp.*, 305 U.S. App. D.C. 60, 16 F.3d 1271, 1276 (D.C. Cir. 1994)). However, the Court need not accept asserted inferences or conclusory allegations that are unsupported by the facts set forth in the complaint. *Kowal*, 16 F.3d at 1276. In deciding whether to dismiss a claim under Rule 12(b)(6), the Court can only consider the facts alleged in the complaint, documents attached as exhibits or incorporated by reference into the complaint, and matters about which the Court may take judicial notice. *EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621 at 624-25, 326 U.S. App. D.C. 67 (1997). The Court will dismiss a claim pursuant to Rule 12(b)(6) only if the defendant can demonstrate "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley*, 355 U.S. at 45-46.

This Court will grant a motion for summary judgment under Rule 56(c) if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits or declarations, if any, demonstrate that there is no genuine issue as to any material fact and that the

moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). When ruling on a motion for summary judgment, this Court must view the evidence in the light most favorable to the non-moving party. *Bayer v. United States Dep't of Treasury*, 294 U.S. App. D.C. 44, 956 F.2d 330, 333 (D.C. Cir. 1992). However, the non-moving party cannot rely on "mere allegations or denials . . . , but . . . must set forth specific facts showing that there [are] genuine issues for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986) (citation omitted). Under Rule 56, "if a party fails to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial" summary judgment is warranted. *Hazward v. Runyon*, 14 F. Supp. 2d 120, 122 (D.D.C. 1998) (*citing Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)). The party moving for summary judgment bears the burden of establishing the absence of evidence to support the non-moving party's case. *Id.* In considering a motion for summary judgment, "the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150, 147 L. Ed. 2d 105, 120 S. Ct. 2097 (2000).[9]

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[9] The vast majority of the plaintiff's claims will be dismissed pursuant to Rule 12(b)(6). However, as discussed later in this opinion, the Court has looked beyond the complaint with regards to the plaintiff's First and Fifth Amendment claims, and accordingly, the Court will review those claims under the summary judgment standard. *See* Fed. R. Civ P. 12(b). Although no discovery has taken place, it is appropriate for this Court to look beyond the complaint and resolve these claims under Rule 56(c), as the plaintiff has had ample opportunity to come forward with, and indeed has provided this Court with, a

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(B) Legal Analysis

The plaintiff's principal claim in this action is that the OFAC's designation of the IARA-USA as an SDGT and the blocking of its assets, amount to violations of the APA, namely, 5 U.S.C. § 706(2). Pl.'s Opp'n at 18. Under this provision of the APA, this Court may vacate a decision by an agency only if the decision is:

> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (B) contrary to constitutional right, power, privilege, or immunity;[10]
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
>
> (D) without observance of procedure required by law;[11]

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substantial number of exhibits and declarations to support its positions. Moreover, for several reasons, this Court must conclude that no further discovery is warranted. First, the plaintiff's principal claim is an APA challenge to the OFAC decision. As such, that challenge is limited to a review of the administrative record. *Camp v. Pitts*, 411 U.S. 138, 142, 36 L. Ed. 2d 106, 93 S. Ct. 1241 (1973) (under the APA, "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court."). Moreover, based upon the papers and exhibits currently before the Court, discovery would not produce any evidence that could create a genuine factual dispute, which would be necessary to alter this Court's rulings.

[10] In addition to claiming that the OFAC's actions violate various constitutional principles, and thus should be vacated pursuant to the APA, the plaintiff's complaint lists separately various alleged constitutional violations. Compl. ¶¶ 45-78. However, the claims are identical. Because this Court finds that the OFAC's actions do not contravene the Constitution, and thus are not violative of the APA, the constitutional claims, for the reasons stated herein, must fail as well.

> (E) unsupported by substantial evidence . . . ; or
>
> (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

5 U.S.C. § 706(2)(A). The plaintiff claims that the defendants' actions should be vacated under each of the above provisions. Pl.'s Opp'n at 18. The Court will address each in turn.

> (1) Are the Defendants' Actions Arbitrary and Capricious, Supported by Substantial Evidence, and Warranted by the Facts?

Under the arbitrary and capricious standard, the Court does not undertake its own fact-finding, rather, the Court must review the administrative record as assembled by the agency. *Camp v. Pitts*, 411 U.S. 138 at 141, 142, 36 L. Ed. 2d 106 (1973). This review is highly deferential to the agency. *See Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416, 28 L. Ed. 2d 136, 91 S. Ct. 814 (1971); *Holy Land Found. for Relief and Dev. v. Ashcroft*, 357 U.S. App. D.C. 35, 333 F.3d 156, 162 (D.C. Cir. 2003). And "there is a presumption in favor of the validity of [the] administrative action." *Bristol-Myers Squibb Co. v. Shalala*, 923 F. Supp. 212, 216 (D.D.C. 1996). If the "agency's reasons and policy choices . . . conform to 'certain minimal standards of rationality' . . . the [decision] is reasonable and must be upheld." *Small Refiner Lead Phase-Down*

[11] Despite claiming that the defendants' actions were contrary to established procedures, Pl.'s Opp'n at 18, the plaintiff presents no such argument in his papers submitted to the Court. Thus, this claims will not be addressed.

Task Force v. EPA, 227 U.S. App. D.C. 201, 705 F.2d 506, 521 (D.C. Cir. 1983) (citation omitted). Thus, the Court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Citizens to Pres. Overton Park*, 401 U.S. at 416. Moreover, in reviewing agency decisions regarding foreign relations, the Court is mindful that "[m]atters related 'to the conduct of foreign relations . . . are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or inference.'" *Regan*, 468 U.S. at 242 (*quoting Harisiades v. Shaughnessy*, 342 U.S. 580, 589, 96 L. Ed. 586, 72 S. Ct. 512 (1952)). Thus, "as a general principal, . . . this Court should avoid impairment of decisions made by the Congress or the President in matters involving foreign affairs or national security." *Global Relief Found. v. O'Neill*, 207 F. Supp. 2d 779, 788 (N.D. Ill. 2002) (*citing Haig v. Agee*, 453 U.S. 280, 292, 69 L. Ed. 2d 640, 101 S. Ct. 2766 (1981)).

The plaintiff contends that the administrative record lacks any evidence demonstrating that the plaintiff has funded terrorist activities or that the plaintiff knowingly interacted with a known terrorist or terrorist organization prior to its designation by the IARA as an SDGT. Pl.'s Opp'n at 18-19. Moreover, the plaintiff contends that the District of Columbia Circuit's decision in *Holy Land Found.*, 333 F.3d at 156, requires the conclusion that the OFAC's decision should be vacated because it lacks substantial evidence in the record. Pl.'s Opp'n at 20-21. In particular, the plaintiff relies heavily on their claim that the IARA and the IARA-USA are completely separate entities that are in no way related, or controlled by the other. *Id.* at 22-30.

This Court recognizes that the plaintiff is at an inherent disadvantage as it is not able to review and analyze the administrative record in its entirety, but rather is limited only to those portions of the administrative record that are not classified. This Court, however, has before it both the classified and unclassified administrative record. Although the Court cannot disclose the evidence which the defendants contend support its decision to block the assets of the IARA-USA, upon careful review of the entire record before it, and affording the defendants the substantial deference they are due under the APA, this Court must conclude that the agency's decision to block the IARA-USA's assets was not arbitrary and capricious, but is in fact supported by substantial evidence in the record and warranted by the facts contained therein.[12] In fact, contrary to the plaintiff's argument, this Court must conclude that there is substantial evidence in the record to support the defendants' conclusion that the IARA-USA is related and connected to the IARA. Accordingly, the defendants are entitled to

[12] Because the Court relies heavily on portions of the classified administrative record, and viewed the administrative record as a whole in making its decision, the Court's analysis would be incomplete if it detailed only those portions of the unclassified administrative record that supports its decision. Thus, this Court will not delineate the facts in the unclassified administrative record that supports this ruling, as doing so would provide an incomplete and fragmented view of this Court's reasoning. *See, e.g., Edmonds v. United States DOJ*, 323 F. Supp. 2d 65, 68 n.3 (D.D.C. 2004), *aff'd* 161 Fed. Appx. 6, 2005 U.S. App. LEXIS 8116, No. 04-5386 (D.C. Cir. May 6, 2005). Moreover, because the Circuit Court will have to review this decision de novo if it is appealed, this Court's analysis of the administrative record will not be central to the resolution of any such appeal. *See Pharm. Research and Mfrs. Am. v. Thompson*, 360 U.S. App. D.C. 375, 362 F.3d 817, (D.C. Cir. 2004) ("We review the district court's grant of summary judgment de novo pursuant to the [APA]").

summary judgment on this portion of the plaintiff's APA claim.

(2) Did the Defendants' Actions Exceed their Statutory Authority?

The power vested in the President pursuant to the IEEPA "may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." 50 U.S.C. § 1701. Based on the authorization of this statutory provision, the plaintiff posits that the defendants' decision to block the IARA-USA's assets violated the APA because the OFAC exceeded its statutory authority. Pl.'s Opp'n at 43-44. Specifically, the plaintiff argues that there is no evidence of an "unusual and extraordinary threat" to the United States to warrant the blocking of the IARA-USA's assets, as there is no evidence that the plaintiff engaged in or supported terrorist activities. *Id.* at 44.

Contrary to the plaintiff's argument, however, 50 U.S.C. § 1701 does not form the basis for challenging an individual designation. Rather, this provision sets forth the requirement that the President declare a national emergency with respect to such "unusual and extraordinary threats" in order to invoke the provisions of the IEEPA. Once this finding has been made, then the provisions of the IEEPA can be invoked and the assets blocked of organizations designated as SDGTs. Thus, any challenge based on 50 U.S.C. § 1701 must be to the President's determination that an "unusual and extraordinary threat" exists, i.e., the legality of the Executive Order. No such

challenge is made here, nor could it successfully be made. The President specifically found the existence of "grave acts of terrorism and threats of terrorism committed by foreign terrorists, . . . and the continuing and immediate threat of further attacks on United States nationals or the United States [that] constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. . . . " Exec. Order. 13,224, 66 Fed. Reg. 49,079, at 49,079 (Sept. 23, 2001). Thus, by finding that an unusual and extraordinary threat exists, and by declaring a national emergency, the President employed 50 U.S.C. § 1701 to invoke the provisions of the IEEPA. And following the September 11, 2001 attacks, there was clearly a basis for the President's finding of an unusual and extraordinary threat, and this finding comports with the requirements of 50 U.S.C. § 1701. Accordingly, the President properly exercised the powers granted to him under the IEEPA.

Nonetheless, even if this Court could conclude that 50 U.S.C. § 1701 provides a basis to challenge an individual organization's designation, the plaintiff's claim would still have to be rejected. First, Executive Order 13,224 clearly designates the procedures for designating organizations as SDGTs. Exec. Order. 13,224 §§ 5-7, 66 Fed. Reg. 49,079, at 49,081 (Sept. 23, 2001). Moreover, this Court has already concluded that the defendants had a reasonable basis for blocking the IARA-USA's assets. Thus, there was a sufficient basis for the conclusion that the IARA-USA's actions posed an "unusual and extraordinary" threat to the United States. Accordingly, there is simply no basis for the plaintiff's claim that the OFAC exceeded its

statutory authority.[13] Accordingly, this claim must be dismissed under Rule 12(b)(6), as the plaintiff has failed to state a claim upon which relief can be granted.

(3) Were the Plaintiff's Constitutional Rights Violated?

(a) The Plaintiff's Fourth Amendment Claim

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against

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[13] During the preliminary injunction hearing, the plaintiff also posited that the defendants exceeded their statutory authority by blocking its assets because the aid provided by the IARA-USA fell under the humanitarian aid exception of the IEEPA, 50 U.S.C. § 1702(b). Defs.' Mem. at 31. The defendants again argue that the plaintiff's position has no merit. In the plaintiff's opposition, however, the plaintiff makes no argument to the contrary. Accordingly, this Court will treat this argument as conceded by the plaintiff. *FDIC v. Bender*, 326 U.S. App. D.C. 390, 127 F.3d 58, 67-68 (D.C. Cir. 1997); *Stephenson v. Cox*, 223 F. Supp. 2d 119, 121 (D.D.C. 2002). However, even if such a claim was now being made, it is clear that the humanitarian aid exception would not apply in this case. First, 50 U.S.C. § 1702(b) does not, on its face, apply to monetary contributions, but rather is limited to the donation of "articles such as food, clothing, and medicine." 50 U.S.C. § 1702(b)(2); *Holy Land Found. for Relief and Dev. v. Ashcroft.*, 219 F. Supp. 2d 57, 68 (D.D.C. 2002). Moreover, the humanitarian aid exception has an exception itself. Specifically, it states that the exception applies "except to the extent that the President determines that such donations . . . would seriously impair his ability to deal with any national emergency declared under section 1701 of this title. . . . " 50 U.S.C. § 1702(b). Section 4 of Executive Order 13,224 as originally enacted, and as amended by Executive Order 13,372, specifically invokes this exception to the humanitarian aid exception. Exec. Order 13,224 § 4, 66 Fed. Reg. 49,079 (Sept. 23, 2001); *see also* Exec. Order 13,372 § 1, 70 Fed. Reg. 8499 (Feb. 16, 2005). Accordingly, the humanitarian aid exception would not apply even if it was now being advanced by the plaintiff.

> unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The plaintiff contends that the defendants searched its offices and seized its assets without a warrant or an exception to the warrant requirement in violation of the Fourth Amendment. Compl. ¶¶ 52-57; Pl.'s Opp'n at 36-37. The plaintiff specifically is challenging "the removal of its property at the time of the raid." Pl.'s Opp'n at 35. Moreover, the plaintiff alleges that the defendants obtained a search warrant under false pretenses. *Id.* It appears that the plaintiff is raising two distinct Fourth Amendment claims. First, whether the criminal search warrant that was issued and executed was valid, and second, whether the OFAC properly blocked the IARA-USA's assets.

To the extent that the plaintiff's Fourth Amendment claim seeks to challenge the validity of the search warrant, this aspect of the claim must be dismissed. The search warrant was issued by the United States District Court for the Western District of Missouri. Federal Rule of Criminal Procedure 41(g) states that "[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized." Fed. R. Crim. P. 41(g). Consistent with the language of the rule, the District of Columbia Circuit has held such a challenge to the validity of a search warrant must be brought in the district in which the seizure took place. *See Smith v. Katzenbach*, 122 U.S. App. D.C. 113,

351 F.2d 810, 814 (D.C. Cir. 1965);[14] *see also In re Grand Jury Proceedings*, 115 F.3d 1240, 1245 (5th Cir. 1997). Accordingly, to the extent that the plaintiff challenges the validity of the search warrant, this claim must be brought in the district in which the property was seized – the Western District of Missouri.[15] Accordingly, this claim must fail.

Moreover, to the extent the plaintiff is alleging that the OFAC's blocking of its assets violates the Fourth Amendment, this claim must fail as well. As another member of this Court noted in *Holy Land Found.*, "[t]he Government plainly had the authority to issue the blocking order pursuant to the IEEPA and the Executive Orders and the Court has determined that its actions were not

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[14] Rule 41(g) was originally part of Rule 41(e), and that is how the rule was constructed when the Circuit Court issued its ruling in Smith. Under that earlier version of the rule, a party could seek the return of property or suppression of its use as evidence in the district where the property was seized. *See Smith*, 351 F.2d at 814. The rule also provided that the suppression motion could be made in the district where the trial is to be held. *Id.* This rule was amended in 1972, 1989, and 2002, with one result being part of Rule 41(g) becoming Rule 41(h). *See* Fed. R. Crim. P. 41, amend. Under the current version of the Rule, a motion seeking return of property is only proper in the district where the property was seized. Fed. R. Crim. P. 41(g). On the other hand, Rule 41(h) provides that a motion to suppress can be brought only in the district where the trial will occur. Fed. R. Crim. P. 41(h). In this case, the plaintiff is seeking the return of its property.

[15] The defendants make this argument in their dismissal motion, but the plaintiff makes no attempt in its opposition to challenge this argument. Accordingly, it appears that the plaintiff concedes that this Court is not the proper forum to challenge the legality of the search warrant. *FDIC*, 127 F.3d at 67-68. Moreover, count seven of the plaintiff's complaint, alleging that the search warrant was based upon a false affidavit, is also a challenge to the sufficiency of the search warrant and, for the reasons stated above, must also be brought in the Western District of Missouri.

arbitrary and capricious. Further, the case law is clear that a blocking of this nature does not constitute a seizure." *Holy Land Found. for Relief and Dev. v. Ashcroft.*, 219 F. Supp. 2d 57, 78-79 (D.D.C. 2002) (*citing Tran Qui Than v. Regan*, 658 F.2d 1296, 1301 (9th Cir. 1981); *D.C. Precision Inc. v. United States*, 73 F. Supp. 2d 338, 343 n. 1. (S.D.N.Y. 1999); *Can v. United States*, 820 F. Supp. 106, 109 (S.D.N.Y. 1993)). Accordingly, this Court agrees that the OFAC's blocking of the IARA-USA's assets does not create a cognizable claim under the Fourth Amendment. Thus, the defendants are entitled to dismissal of the plaintiff's Fourth Amendment claim.[16]

(b) The Plaintiff's Fifth Amendment Due Process Claim

The Fifth Amendment provides that no person may "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend V. "The fundamental requirement of [procedural] due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976) (*quoting Armstrong v. Manzo*, 380 U.S. 545, 552, 14 L. Ed. 2d 62, 85 S. Ct. 1187 (1965)). "Procedural due process rules are meant to protect

[16] Much of the plaintiff's Fourth Amendment argument is premised on the assumption that the IARA-USA is an organization that is completely separate from the IARA. Thus, goes the argument, there was no probable cause that the IARA-USA was engaged in any wrongdoing. Pl.'s Opp'n at 36-37. As already noted, however, this Court has concluded that there is substantial evidence in the administrative record to support the OFAC's decision to block the IARA-USA's assets. Accordingly, because the underlying assumption of the plaintiff's argument is without merit, so to is the argument itself.

persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U.S. 247, 259, 55 L. Ed. 2d 252, 98 S. Ct. 1042 (1978). "Due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471 at 481, 33 L. Ed. 2d 484, 92 S. Ct. 2593 (1972). In resolving claims of procedural due process violations, three factors are considered:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335. Moreover, in applying this test, the Court is mindful that there are circumstances that "present[] an 'extraordinary' situation in which postponement of notice and hearing until after seizure does not deny due process." *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 679-80, 40 L. Ed. 2d 452, 94 S. Ct. 2080 (1974). As the Court noted in Calero-Toledo, even immediate seizure of a property interest is appropriate if (1) "the seizure has been directly necessary to secure an important governmental or general public interest;" (2) "there has been a special need for very prompt action;" and (3) "the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute,

that it was necessary and justified in the particular instance." *Id.* at 679 (citation omitted).

Here, the plaintiff claims its due process rights were violated because it was not afforded notice and a hearing before its assets were blocked. Compl. ¶¶ 45-47; Pl.'s Opp'n at 38-39. In support of this argument, the plaintiff relies heavily on *Nat'l Council of Resistance of Iran (NCRI) v. Dep't of State*, 346 U.S. App. D.C. 131, 251 F.3d 192, 205 (D.C. Cir. 2001). However, NCRI is inapposite. In *NCRI*, the District of Columbia Circuit held that notice and an opportunity to be heard must be afforded prior to designating an entity as a "foreign terrorist organization" under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"). NCRI, 251 F.3d at 205-208. However, as another member of this Court has found, NCRI does not control in cases where action was taken pursuant to the IEEPA, as actions under the IEEPA "flow [] from a Presidentially declared national emergency." *Holy Land Found.*, 219 F. Supp. 2d at 76. Moreover, the Circuit Court in NCRI did "not foreclose the possibility that the [government], in an appropriate case, [could] demonstrate the necessity of withholding all notice and all opportunity to present evidence until the designation [was] already made." *NCRI*, 251 F.3d at 208. This is just such a case. Thus, this Court agrees with its colleague in *Holy Land Found.*, that the applicable test was enunciated in *Calero-Toledo*.

It cannot be reasonably argued that protecting the public from terrorist attacks is not an important governmental and public interest. Moreover, here,

> prompt action by the Government was necessary to protect against the transfer of assets subject to the blocking order. Money is fungible, and any delay or pre-blocking notice would afford

> a designated entity the opportunity to transfer, spend, or conceal its assets, thereby making the IEEPA sanctions program virtually meaningless.

Holy Land Found., 219 F. Supp. 2d at 77. Finally, there is no dispute that the government, not private parties, initiated the blocking at issue here. Based on these circumstances, the Court agrees with the defendants' position that the plaintiff were not entitled to pre-deprivation notice and a hearing. Accordingly, the plaintiff's due process challenge must be dismissed, as it fails to state a claim as a matter of law.

(c) The Plaintiff's Fifth Amendment Equal Protection Claim

The plaintiff also contends that the defendants have violated the equal protection guarantees embodied in the Fifth Amendment.[17] Compl. ¶¶ 71-78; Pl.'s Opp'n at 31-35. Specifically, the plaintiff opines that the defendants have treated the IARA-USA differently than it has treated the United Nations Children's Fund ("UNICEF"), which has assisted, sponsored, and provided support to the IARA even after the organization was designated as a SDGT. Pl.'s Opp'n at 33.

"The Equal Protection Clause of the [Fifth] Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly

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[17] The equal protection component of the Fifth Amendment is derived from the Amendment's due process clause. *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 616, 114 L. Ed. 2d 660, 111 S. Ct. 2077 (1991).

situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985) (*quoting Plyler v. Doe*, 457 U.S. 202, 216, 72 L. Ed. 2d 786, 102 S. Ct. 2382 (1982)). When assessing an equal protection challenge, "[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Id.* at 440. However, "when a statute classifies by race, alienage, or national origin," courts must apply a "strict scrutiny" standard of review. *Id.* Accordingly, this Court must first determine what level of review it must employ in this case.

In *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 49 L. Ed. 2d 520, 96 S. Ct. 2562 (1976), the Supreme Court made clear that an "equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Id.* at 312. The only conceivable suspect class challenge that could be made here would be religious based,[18] but there is no basis for such a claim, and the plaintiff does not argue, that the IEEPA and the Executive Order intentionally discriminates on the basis of religion. Pl.'s Opp'n at 34 (acknowledging that the IEEPA is "fair on its face"). Nor does the IEEPA or the Executive Orders interfere with the exercise of a fundamental right. Accordingly, any classification

[18] The plaintiff does not attempt to argue, nor could it, that terrorists or terrorists organizations are a suspect class that warrant application of the "strict scrutiny" test. *See, e.g., Holy Land Found., for Relief and Dev. v. Ashcroft*, 357 U.S. App. D.C. 35, 333 F.3d 156, 165 (D.C. Cir. 2003) ("there is no constitutional right to fund terrorism.").

made by the IEEPA or the Executive Orders need only be rationally related to a legitimate governmental objective in order to survive a constitutional challenge. *See Mathews v. de Castro*, 429 U.S. 181, 185, 50 L. Ed. 2d 389, 97 S. Ct. 431 (1976). Here, the IEEPA and the Executive Order are clearly rationally related to the government's objective to protect the American public from terrorist attacks.

Moreover, the plaintiff has simply failed to even invoke the Equal Protection guarantees of the Fifth Amendment. As noted earlier, as a predicate to invoking the protections of the Equal Protection Clause, the plaintiff must demonstrate that it was similarly situated to other nonprofit organizations who support terrorist activities and who were treated differently. *See Plyler v. Doe*, 457 U.S. 202, 72 L. Ed. 2d 786, 102 S. Ct. 2382 (1982); *Cook v. Babbitt*, 819 F. Supp. 1, 11 (D.D.C. 1993) (*citing City of Cleburne*, 473 U.S. at 439). Here, the plaintiff contends that its treatment has been different than that of UNICEF. However, based on the evidence presented to this Court, there is simply no basis to conclude that UNICEF has even remotely the same type and number of ties to the IARA, or any other organization with terrorist ties, as does the plaintiff. Thus, the underlying premise for the plaintiff's equal protection argument fails as UNICEF and the IARA-USA are simply not similarly situated. As the Circuit Court stated, "there is no constitutional right to fund terrorism." *Holy Land Found.*, 333 F.3d at 165 (citation omitted). And the record evidence supports the conclusion that the IARA-USA has done exactly that. Accordingly, the defendants are entitled to summary judgment on the plaintiff's equal protection claim.

(d) The Plaintiff's Takings Clause Claim

The second count of the plaintiff's complaint alleges that the taking of its property and the blocking of its assets violate the Takings Clause of the Fifth Amendment. Compl. ¶¶ 48-51. Under the Fifth Amendment, no "private property [shall] be taken for public use, without just compensation." U.S. Const. amend V. The defendants argue, and this Court agrees, that this claim must be dismissed.[19] First, it appears that this Court lacks subject matter jurisdiction over the plaintiff's Fifth Amendment claim, as this is a claim properly brought before the United States Court of Federal Claims pursuant to the *Tucker Act*, 28 U.S.C. § 1491. *See, e.g.*, 28 U.S.C. § 1491(a)(1) ("[t]he United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department. . . . "); *Dames & Moore v. Regan*, 453 U.S. 654, 688-89, 69 L. Ed. 2d 918, 101 S. Ct. 2972 (1981) (noting that the Court of Federal Claims is the proper forum for claims alleging an unconstitutional taking). Moreover, to the extent that the plaintiff seeks to challenge the blocking of assets pursuant to an Executive Order, such an order is not, as a matter of law, a takings within the meaning of the Fifth Amendment. *Holy Land Found.*, 219 F. Supp. 2d at 78 (citing multiple cases for the proposition that the blocking of assets does not "as a

[19] The plaintiff has failed to advance any argument in opposition to the defendants' position regarding this claim. Accordingly, they have conceded the issue and this claim could be dismissed without further discussion. FDIC, 127 F.3d at 67-68.

matter of law, constitute takings within the meaning of the Fifth Amendment.").[20]

(e) The Plaintiff's First Amendment Freedom of Speech Claim

The fourth count of the plaintiff's complaint alleges that the defendants, by prohibiting the plaintiff from making humanitarian contributions, has violated the free speech guarantees of the First Amendment. Compl. ¶¶ 58-63. Under the First Amendment, "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend I. In analyzing claims under the First Amendment, the Supreme Court has provided multiple analytical frameworks depending on the type of speech at issue. For example, if the speech is aimed at interfering with the expressive component of conduct, the Court must apply the strict scrutiny standard of review. *See, e.g. Texas v. Johnson*, 491 U.S. 397, 406, 105 L. Ed. 2d 342, 109 S. Ct. 2533 (1989) (applying strict scrutiny to law prohibiting only the burning of flags which offended witnesses of the events). However, the Court analyzes a claim under intermediate scrutiny when the "regulation . . . serves purposes unrelated to the content of expression." *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 105 L. Ed. 2d 661, 109 S. Ct. 2746 (1989); *see also United States v. O'Brien*, 391 U.S. 367, 376, 20 L. Ed. 2d 672, 88 S. Ct. 1673 (1968) (applying intermediate scrutiny to regulation

[20] In addition, as this Court has already noted, if this claim seeks the return of the plaintiff's property seized pursuant to the search warrant, such a claim must be brought in the Western District of Missouri.

prohibiting the burning of a draft card).[21] Here, the plaintiff premises its claim on the Supreme Court's decisions in *Buckley v. Valeo*, 424 U.S. 1, 46 L. Ed. 2d 659, 96 S. Ct. 612 (1976) and *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 145 L. Ed. 2d 886, 120 S. Ct. 897 (2000), and opines that this Court should employ the strict scrutiny analysis. Specifically, the plaintiff posits that these cases stand for the proposition that the contribution of money is clearly the type of speech activity that warrants protection under the First Amendment. Pl.'s Opp'n at 39-40. Thus, because the Executive Order and the IEEPA prohibit the plaintiff from making financial contributions for humanitarian aid, the plaintiff contends that they violated the First Amendment. Pl.'s Opp'n at 39-40.

The defendants do not argue, nor could they, that donation of money is not a form of speech protected by the First Amendment. *See, e.g., Buckley*, 424 U.S. at 16; *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 636-37, 63 L. Ed. 2d 73, 100 S. Ct. 826 (1980). Rather, they posit that the Court should employ an intermediate scrutiny standard of review, Defs.' Mem. at 53-54, and this Court agrees. Contrary to the plaintiff's contention, Buckley and its progeny simply do not set forth the proper framework for the analysis the Court must conduct

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[21] The principal standards under which First Amendment claims are reviewed are strict scrutiny and intermediate scrutiny. *Am. Soc. of Ass'n Executives v. United States*, 23 F. Supp. 2d 64, 68 (D.D.C. 1998). However, the Supreme Court has employed "other standards for analyzing the restriction of speech depending on the particulars of the speech or the type of regulation at issue. In analyzing statutes involving taxation or the allocation of public funds the Supreme Court has applied a standard even more deferential than intermediate scrutiny." *Id.*

in this case. In *Buckley*, the Supreme Court was presented with a statute that placed restrictions on political contributions. *Buckley*, 424 U.S. at 1. Noting that "the First Amendment affords the broadest protection to such political expression," the Court applied the strict scrutiny standard in analyzing whether the restrictions passed constitutional scrutiny. *Id.* at 14. Here, however, there is no allegation that the IARA-USA uses its funds to make political contributions, rather, the IARA-USA uses its funds for charitable and humanitarian aid. As Judge Kessler noted in *Holy Land Found.*, "such charitable contributions plainly do not involve political expression, and therefore do not warrant strict scrutiny under Buckley." *Holy Land Found.*, 219 F. Supp. 2d at 82 n. 37. Rather, First Amendment freedom of speech challenges to blocking decisions are analyzed under the intermediate scrutiny standard discussed in *United States v. O'Brien*, 391 U.S. 367, 376-77, 20 L. Ed. 2d 672, 88 S. Ct. 1673 (1968). *See Holy Land Found.*, 219 F. Supp. 2d at 81; *see also Humanitarian Law Project v. Reno*, 205 F.3d 1130, 1135-36 (9th Cir. 2000); *Global Relief Found., Inc. v. O'Neill*, 207 F. Supp. 2d 779, 806 (N.D. Ill. 2002).

Under O'Brien, the government's restriction passes intermediate scrutiny if (1) "it is within the constitutional power of the Government;" (2) "it furthers an important governmental interest;" (3) "the governmental interest is unrelated to the suppression of free expression;" and (4) "the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." 391 U.S. at 377. Here, the IEEPA and the Executive Order clearly survive constitutional scrutiny under this standard and the plaintiff makes absolutely no attempt to argue otherwise. First, the President clearly

had the power to issue Executive Order 13,224, and the OFAC had the authority to block the plaintiff's assets. *See Regan*, 468 U.S. at 244; *Teague v. Regional Comm'r of Customs*, 404 F.2d 441 at 445 (2d Cir. 1968). Second, Executive Order 13,224 and the OFAC's actions clearly further an important governmental interest – preventing terrorist attacks. Third, the government's interest is completely unrelated to the suppression of free expression, rather, its interest is to prohibit the funding of terrorist activities. As noted in *Holy Land Found.*, "money is fungible, and the Government has no other, narrower, means of ensuring that even charitable contributions to a terrorist organization are actually used for legitimate purposes." *Holy Land Found.*, 219 F. Supp. 2d at 82 (*citing Humanitarian Law Project*, 205 F.3d at 1136). Moreover, nothing in the IEEPA or the Executive Order prohibits the IARA-USA from expressing its views. Finally, the incidental restriction on the First Amendment is no greater than necessary. Accordingly, this Court must conclude that the restrictions created by the Executive Order and the OFAC's actions are "narrowly enough tailored to only further its interest in stopping the flow" of funds to terrorist activities. *Id.*

(f) The Plaintiff's First Amendment Freedom of Association Claim

The plaintiff also claims, relying on *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 73 L. Ed. 2d 1215, 102 S. Ct. 3409 (1982), that because Executive Order 13,224 and the actions of the OFAC's completely prohibit the plaintiff from making any contributions, which is a type of associational activity, the Executive Order and the blocking order violate its right of association as protected by the

First Amendment. Pl.'s Opp'n at 41-43. Specifically, the plaintiff contends that the government simply cannot meet its "burden of establishing knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims," which is necessary to withstand constitutional scrutiny. Pl.'s Opp'n at 41-42 (*quoting Healy v. James*, 408 U.S. 169, 186, 33 L. Ed. 2d 266, 92 S. Ct. 2338 (1972)). The argument raised here is virtually identical to the argument raised and rejected by the Court in *Holy Land Found.*, and this Court sees no reason to depart from the very clear and persuasive logic in that case.

In *Claiborne Hardware Co.*, the Supreme Court reversed the judgment against the NAACP and members of that organization who had participated in a seven-year boycott of white merchants. The Supreme Court found that liability had been unconstitutionally imposed "by reason of association alone." *Claiborne Hardware Co.*, 458 U.S. at 920. As the District Court in *Holy Land Found.* noted, "this is simply not a case like *Claiborne Hardware*, because OFAC's action was not taken against [the IARA-USA] for 'reason of association alone.'" *Holy Land Found.*, 219 F. Supp. 2d at 80 (citation omitted). Rather, here, as in *Holy Land Found.*,

> the IEEPA, the two Executive Orders, and the blocking order do not prohibit membership in [the IARA-USA] or endorsement of its views, and therefore does not implicate [the IARA-USA's] association rights. Instead, they prohibit [IARA-USA] from providing financial support to [the IARA], "and there is no constitutional right to facilitate terrorist."

Holy Land Found., 219 F. Supp. 2d at 81 (*quoting Humanitarian Law Project*, 205 F.3d at 1133). Thus, Claiborne Hardware Co. does not control this case and the defendants' actions, which do not prohibit association, are not unconstitutional.

Moreover, because the defendants have not acted based on guilt by association, the specific intent requirement discussed in *Claiborne Hardware Co.* is not applicable here. Nonetheless, "imposing a 'specific intent' requirement on the Government's authority to issue blocking orders would substantially undermine the purpose of the economic sanctions programs. Regardless of [its own] intent, [the IARA-USA] cannot effectively control whether support given to [the IARA] is used to promote that organizations's unlawful activities." *Holy Land Found.*, 219 F. Supp. 2d at 81 (*citing Humanitarian Law Project*, 205 F.3d at 1133). Accordingly, the defendants are entitled to dismissal of this claim, as the plaintiff has failed to state a claim upon which relief can be granted.

(g) The Plaintiff's First Amendment Freedom of Religion Claim

The fifth count of the plaintiff's complaint alleges a violation of its First Amendment right of free exercise of religion. Compl. ¶¶ 64-70. Specifically, the plaintiff claims that the "IARA-USA and its Muslim donors and employees support and participate in the IARA-USA's work because it fulfills their religious obligations as Muslims to engage in Zakat (humanitarian charitable giving)." *Id.* ¶ 65. Thus, argues the plaintiff, by blocking its assets, the government has substantially burdened its and its donors exercise of religion. *Id.* ¶ 66. The defendants posit, however, that this claim must fail under the ruling in *Farrakhan v. Reagan*,

669 F. Supp. 506, 512, *aff'd* 271 U.S. App. D.C. 273, 851 F.2d 1500 (1988), and also because the IARA-USA cannot invoke the religious rights of its employees or past donors, nor does it have standing itself to state a valid free exercise claim. Defs.' Mem. at 58-59. The plaintiff makes no attempt to counter the defendants' argument, and this Court therefore must conclude that the plaintiff concedes that this claim has no merit and must be dismissed. *FDIC*, 127 F.3d at 67-68. In any event, the Court notes that the IARA-USA lacks standing to even make such a claim. As the Supreme Court has recognized, "since 'it is necessary in a free exercise cause for one to show the coercive effect of the enactment as it operates against him in the practice of his religion,' the claim asserted here is one that ordinarily requires individual participation." *Harris v. McRae*, 448 U.S. 297, 321, 65 L. Ed. 2d 784, 100 S. Ct. 2671 (1980) (citation omitted). Thus, the Harris Court held that an organization did not have standing to raise a free exercise claim, but rather, it must be brought by an individual. *Id.* Here, since the only named plaintiff is the IARA-USA, an organization, the IARA-USA simply has no standing to assert this challenge. *See Harris*, 448 U.S. at 321; *Holy Land Found.*, 219 F. Supp. 2d at 83-84.

(h) The Plaintiff's 42 U.S.C. § 1985(3) Claim

Although not specifically challenged by the defendants in their dismissal motion, the plaintiff's § 1985 claim must fail as well. This claim is predicated on the defendants' alleged constitutional violations. Compl. ¶¶ 92-101. Since this Court has already concluded that the plaintiff's constitutional challenges can not survive the defendants' motions, the legal predicate underlying this claim is lacking and it too cannot survive.

(C) Conclusion

Based on the foregoing analysis, the Court concludes that the plaintiff is unable to maintain any of the claims it has raised under the APA, the Constitution, and 42 U.S.C. § 1985. Accordingly, the Court must grant either the defendants' motion to dismiss or their motion for summary judgment.

III. Defendant Schlup's Dismissal Motion

In addition to the other defendants' motion for dismissal of the claims against them in their official capacities, which the Court has granted, defendant Schlup also seeks dismissal of the claims brought against him in his individual capacity. The plaintiff alleges that Schlup violated its First, Fourth, and Fifth Amendment rights, by submitting a false affidavit to obtain a search warrant, and violated 42 U.S.C. § 1985(3). Pl.'s Opp'n to Schlup Mot. at 1. The claims are premised upon the invocation of the ruling enunciated in *Bivens*, 403 U.S. at 388.[22] Compl. ¶¶ 47, 51, 57, 63, 70, 78, 85. Schlup posits that he should

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[22] In *Bivens*, the Supreme Court acknowledged the right of citizens to file claims for damages against federal law enforcement officials who violate their constitutional rights. *Bivens*, 403 U.S. at 389. There, petitioner Bivens alleged he had been subjected to an unlawful search and seizure by federal agents in violation of the Fourth Amendment. *Id.* In reversing the District Court and the Second Circuit's affirmance of the dismissal of Biven's complaint on the ground that he had failed to state a cause of action, the Supreme Court held that "damages may be obtained for injuries consequent upon a violation of the Fourth Amendment by federal officials. . . . " *Id.* at 395; *see also Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 66, 151 L. Ed. 2d 456, 122 S. Ct. 515 (2001) ("In *Bivens* . . . we recognized for the first time an implied private action for damages against federal officers alleged to have violated a citizen's constitutional rights.").

be dismissed as a defendant in this case because this Court lacks personal jurisdiction over him.[23] Schlup's Mem. at 3. The plaintiff contends, however, that this Court has personal jurisdiction over Schlup under two distinct theories. First, the plaintiff opines that Schlup has "transacted business" within the meaning of the District of Columbia's long-arm statute, D.C. Code § 13-423. Pl.'s Opp'n to Schlup's Mot. at 4. And second, the plaintiff posits that this Court has personal jurisdiction over Schlup because he is a member of a civil conspiracy with members subject to personal jurisdiction in this Court. Pl.'s Opp'n to Schlup's Mot. at 6. Neither argument, however, provides a sufficient basis for this Court to exercise personal jurisdiction over Schlup.[24]

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[23] In addition, defendant Schlup opines that he is entitled to dismissal of the claims raised against him because (1) this Court is not the proper venue for the plaintiff to assert its claims; (2) he was not properly served with the summons and complaint; (3) the plaintiff cannot state a cognizable Fourth Amendment claim against him because it cannot assert Fourth Amendment protections on behalf of its employees or donors; and (4) he is entitled to qualified immunity. Because this Court concludes that it lacks personal jurisdiction over defendant Schlup, it need not address these alternative positions.

[24] Throughout the IARA-USA's opposition, it opines that discovery will provide further support for its contention that this Court has personal jurisdiction over defendant Schlup. Pl.'s Opp'n to Schlup's Mot. at 4-5. Motions for discovery concerning personal jurisdiction are liberally granted whenever a party has "a good faith belief that such discovery will enable it to show that the court has personal jurisdiction over the defendant." *Caribbean Broad. Sys. Ltd. v. Cable & Wireless PLC*, 331 U.S. App. D.C. 226, 148 F.3d 1080, 1090 (D.C. Cir. 1998). Moreover, "[a] plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of a federal court by withholding information on its contacts with the forum." *El-Fadl v. Cent. Bank of Jordan*, 316 U.S. App. D.C. 86, 75 F.3d 668, 676 (D.C. Cir. 1996). But the plaintiff here is not entitled to discovery. First, the IARA-USA

(Continued on following page)

(A) The District of Columbia Long-Arm Statute

"Because Bivens suits are suits against government officials in their individual, rather than their official, capacities, personal jurisdiction over the individual defendants is necessary to maintain a Bivens claim." *Robertson v. Merola*, 895 F. Supp. 1, 3 (D.D.C. 1995) (*citing Delgado v. Bureau of Prisons*, 727 F. Supp. 24 (D.D.C. 1989); *Lawrence v. Acree*, 79 F.R.D. 669, 670 (D.D.C. 1978)). On a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing personal jurisdiction over each defendant. *Crane v. New York Zoological Soc.*, 282 U.S. App. D.C. 295, 894 F.2d 454, 456 (D.C. Cir. 1990) (explaining that the plaintiff bears the burden of establishing a factual basis for a court's exercise of personal jurisdiction over a defendant). In order to satisfy this burden, the plaintiff cannot rely on conclusory allegations; rather, it must allege specific facts on which personal jurisdiction is based. *First Chicago Int'l v. United Exchange Co.*, 267 U.S. App. D.C. 27, 836 F.2d 1375, 1378 (D.C. Cir. 1988) (noting that conclusory allegations regarding a defendant's business practices are insufficient to establish personal jurisdiction). Moreover, a court need not treat the plaintiff's allegations as true; rather, the court may consider and weigh affidavits and other relevant

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merely mentions that discovery would further support its arguments, however, it has not filed a motion seeking such discovery, or represented what information discovery would disclose which would elucidate any of the issues, including the jurisdictional issue. Moreover, even if this Court could conclude that such a request has been made, in the absence of any proffer concerning "alleged . . . facts remotely suggesting that [Schlup] had any connection to the District of Columbia[,]" the Court concludes that jurisdictional discovery would not shed light on whether it can exercise personal jurisdiction over defendant Schlup. *Caribbean Broad. Sys.*, 148 F.3d at 1090.

matter in making the jurisdictional determination. *Id.* Nonetheless, "[i]n determining whether such a basis exists, factual discrepancies appearing in the record must be resolved in favor of the plaintiff." *Crane*, 894 F.2d at 456 (D.C. Cir. 1990).

Under District of Columbia law, personal jurisdiction can be satisfied either by demonstrating that the court has general jurisdiction pursuant to D.C. Code § 13-422, or that the court has personal jurisdiction pursuant to the District of Columbia long-arm statute, D.C. Code § 13-423. It is clear, and the plaintiff does not contend otherwise, that the Court does not have general jurisdiction over defendant Schlup, as he is not domiciled in the District of Columbia nor does he maintain his principal place of business here. *See* D.C. Code § 13-422. Rather, Schlup is a resident of Missouri and works in Missouri. Schlup's Mot., Declaration of Paul R. Schlup ("Schlup Dec.") ¶ 2. Thus, the question for this Court to resolve is whether it can exercise personal jurisdiction over Schlup pursuant to the District of Columbia's long-arm statute.

The plaintiff contends that it has satisfied the requirements of showing that this Court can exercise personal jurisdiction over Schlup pursuant to D.C. Code § 13-423(a)(1). Pl.'s Opp'n to Schlup's Mot. at 2. This provisions provides: "(a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's – (1) transacting business in the District of Columbia." D.C. Code § 13-423. D.C. § 13-423(a)(1) is "'co-extensive with the Constitution's due process limit.'" *Dickson v. United States*, 831 F. Supp. 893, 897 (D.D.C. 1993) (*quoting First Chicago Int'l v. United Exch. Co., Ltd.*, 267 U.S. App. D.C. 27, 836 F.2d 1375, 1377 (D.C. Cir. 1988)); *see also Envtl.*

Research Int'l, Inc. v. Lockwood Greene Engineers, Inc., 355 A.2d 808 (D.C. 1976) (stating that Congress intended the District of Columbia's long-arm statute to be co-extensive with due process.). As a result of this congruence, courts in this jurisdiction have consistently held that "the only nexus required by . . . [§ 13-423](a)(1) . . . between the District of Columbia and the nonresident defendant is 'some affirmative act by which the defendant brings itself within the jurisdiction and establishes minimum contacts.' "[25] *Berwyn Fuel, Inc. v. Hogan*, 399 A.2d 79, 80 (D.C. 1979) (*quoting Cohane v. Arpeja-California, Inc.* 385 A.2d 153, 158 (D.C. 1978)). Therefore, the plaintiff must demonstrate that exercising jurisdiction over the defendants would not "offend the traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 90 L. Ed. 95, 66 S. Ct. 154 (1945); *see also Hasenfus v. Corporate Air Services*, 700 F. Supp. 58, 61 (D.D.C. 1988) (*quoting Int'l Shoe*, 326 U.S. at 316) (internal quotation marks omitted). "Under the 'minimum contacts' standard, courts must insure that 'the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court [here].' " *GTE New Media Services Inc. v.*

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[25] D.C. Code § 13-423(b) acts as a limitation on § 13-423(a) and "bars . . . claims unrelated to the acts forming the basis for personal jurisdiction." *See Dickson*, 831 F. Supp. at 897 n.5; *Pollack v. Meese*, 737 F. Supp. 663, 666 (D.D.C. 1990) (*citing Willis v. Willis*, 211 U.S. App. D.C. 103, 655 F.2d 1333, 1336 (D.C. Cir. 1981)). The limitation in § 13-423(b) is "meant to prevent 'the assertion of claims in the forum state that do not bear some relationship to the acts in the forum state relied upon to confer jurisdiction.' " *Cohane*, 385 A.2d at 158 (*quoting Malinow v. Eberly*, 322 F. Supp. 594, 599 (D. Md. 1971)). Therefore, if a claim is related to the defendants' acts in the District of Columbia, the requirement of § 13-423(b) is satisfied. *Dickson*, 831 F. Supp. at 897.

BellSouth Corp., 339 U.S. App. D.C. 332, 199 F.3d 1343, 1347 (D.C. Cir. 2000) (*quoting World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 62 L. Ed. 2d 490, 100 S. Ct. 559 (1980)).[26]

Here, the plaintiff opines that because Schlup is a special agent with the Internal Revenue Service ("IRS"), and the IRS is a component of the United States Department of the Treasury, which has its headquarters in the District of Columbia, he has transacted business within the District of Columbia pursuant to the D.C. Code § 13-423(a)(1). Pl.'s Opp'n to Schlup's Mot. at 4. The plaintiff's argument is wholly without merit. First, as already indicated, in order for the plaintiff to precede on its constitutional claims pursuant to Bivens, it must first establish that this Court has personal jurisdiction over Schlup in his individual capacity. *Robertson*, 895 F. Supp. at 3. Moreover, it is well-settled that this Court cannot assert jurisdiction over an individual defendant based on his actions taken pursuant to his employment. *See, e.g., Ali v. District of Columbia*, 349 U.S. App. D.C. 327, 278 F.3d 1, 7 (D.C. Cir. 2002) (district court did not have personal jurisdiction over government employee because all contacts with the District of Columbia were taken in his official capacity); *Ibrahim v. District of Columbia*, 349 U.S. App. D.C. 321,

[26] The burden imposed on the non-resident defendant from being haled into a foreign court will "in an appropriate case be considered in light of other relevant factors, including the interest of the forum state in adjudicating disputes . . . ; the plaintiff's interest in obtaining convenient and effective relief . . . ; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interests of the several states in furthering fundamental substantive social policies." *World-Wide Volkswagen*, 444 U.S. at 292 (internal citations omitted).

357 F. Supp. 2d 187, 193 (D.D.C. 2004) (dismissing claims against government employees because all actions connecting these defendants to the forum were taken in their official capacities). Rather, personal jurisdiction over employees of an agency must be based on their individual contacts with the forum, and cannot be based on the agency's contacts with the forum. *See Ali*, 278 F.3d at 7; *accord Wiggins v. Equifax, Inc.*, 853 F. Supp. 500, 503 (D.D.C. 1994) ("personal jurisdiction over the employees or officers of a corporation in their individual capacities must be based on their personal contacts with the form and not their acts and contacts carried out solely in a corporate capacity."); *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 781 n.13, 79 L. Ed. 2d 790, 104 S. Ct. 1473 (1984) ("jurisdiction over an employee does not automatically follow from jurisdiction over the corporation which employs him"); *Richard v. Bell Atlantic Corp.*, 976 F. Supp. 40, 49 (D.D.C. 1997). Thus, the agency's contact with the District of Columbia are insufficient to confer jurisdiction on this Court over defendant Schlup. Here, the plaintiff believes that this Court can exert personal jurisdiction over Schlup because he is employed and paid by the Department of the Treasury, provides services to the Department of the Treasury at its direction, and is supervised directly or indirectly by officials at the Department of the Treasury. Pl.'s Opp'n to Schlup's Mot. at 3. These allegations are simply insufficient, as each action is based solely on actions allegedly taken by Schlup in his official capacity as an employee of the IRS. The plaintiff's claim that employment by a federal agency provides a basis for this Court to exercise personal jurisdiction over a plaintiff who works and resides in Missouri under D.C. Code § 13-423(a)(1) is clearly contrary to existing precedent.

Moreover, hailing Schlup into Court in this jurisdiction would clearly offend the Due Process Clause. In the seminal case in this area, *International Shoe*, the Supreme Court found that a Delaware corporation that employed salesmen who resided in the State of Washington, regularly sold shoes in permanent display rooms in Washington, resulting in large volumes of business in Washington, had sufficient contact with the State of Washington to be hailed into court there without violating due process. *Int'l Shoe Co.*, 326 U.S. at 320. By contrast, here, Schlup does not live in the District of Columbia, does not own property in the District of Columbia, never owned or operated a business in the District of Columbia, and never supplied services in the District of Columbia. Schlup's Mot., Schlup Dec. ¶¶ 1-11. The simple fact that Schlup is employed by the IRS, which is a component of the Department of the Treasury and is headquartered in the District of Columbia, is simply no basis for this Court to exercise personal jurisdiction over Schlup. *See, e.g., American Ass'n of Cruise Passengers v. Cunard Line Ltd.*, 691 F. Supp. 379, 380 (D.D.C. 1987) (concluding that personal jurisdiction could not be asserted over an out-of-state defendant because of his membership in a District of Columbia trade association); *Investment Co. Institute v. United States*, 550 F. Supp. 1213, 1217 n.6 (D.D.C. 1982) (noting that "it would surely come as a surprise to the members of the many trade associations having offices [in the District of Columbia] that their memberships counted as intrastate business for jurisdictional purposes.").

(B) Conspiracy Theory of Jurisdiction

Alternatively, the plaintiff posits that this Court has personal jurisdiction over Schlup because he is a member

of a civil conspiracy with members subject to personal jurisdiction in this Court. Pl.'s Opp'n to Schlup's Mot. at 6. Courts in this Circuit have "held that acts within the forum of one co-conspirator, in furtherance of an alleged conspiracy, subject a nonresident co-conspirator to personal jurisdiction." *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 78 (D.D.C. 1992) (*citing Mandelkorn v. Patrick*, 359 F. Supp. 692 (D.D.C. 1973)). However, a plaintiff seeking to meet its burden of demonstrating that a court may exercise jurisdiction over a defendant under a conspiracy theory must present a "particularized pleading of the conspiracy as well as the overt acts within the forum taken in furtherance of the conspiracy." *DSMC, Inc. v. Convera Corp.*, 273 F. Supp. 2d 14, 20 (D.D.C. 2002). "Mere speculation that the nonresident defendants' are co-conspirators [is] insufficient to meet plaintiff's prima facie burden." *Dooley*, 786 F. Supp. at 78. Thus, conclusory allegations are simply insufficient to establish a court's jurisdiction under the conspiracy theory.

Here, the plaintiff alleges a conspiracy under 42 U.S.C. § 1985(3). Compl. ¶¶ 92-101. To establish a conspiracy under § 1985(3), the plaintiff must allege:

> (1) a conspiracy; (2) for the purpose of depriving any person or class of persons of the equal protection of the laws, or of privileges and immunities under the law; (3) motivated by some class based, invidiously discriminatory animus exists; (4) whereby a person is either injured in his person or property, or is deprived of any right or privilege of a citizen of the United States.

Graves v. United States, 961 F. Supp. 314, 320 (D.D.C. 1997) (*citing Griffin v. Breckenridge*, 403 U.S. 88, 102-03, 29 L. Ed. 2d 338, 91 S. Ct. 1790 (1971); *Hobson v. Wilson*,

737 F.2d 1, 14, 237 U.S. App. D.C. 219 (D.C. Cir. 1984)). Viewing the plaintiff's complaint in the light most favorable to the plaintiff, this Court simply cannot conclude that the plaintiff has sufficiently pled a claim for conspiracy.

> A civil conspiracy is "a combination of two or more persons acting in concern to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties 'to inflict a wrong against or injury upon another,' and 'an overt act that results in that damage.'"

Graves, 961 F. Supp. at 320 (*quoting Lenard v. Argento*, 699 F.2d 874, 882 (7th Cir. 1983) (citation omitted)). Here, the plaintiff has simply failed to allege facts with particularity that support the existence of a conspiracy. First, the plaintiff's conspiracy claim simply alleges a "government-wide conspiracy" to deprive the plaintiff of various constitutional rights. Compl. ¶¶ 93-94. This is hardly pleading a conspiracy with particularity. Moreover, the plaintiff's complaint fails to identify which defendants were allegedly part of the conspiracy, and in fact, the few factual allegations detailing actions allegedly committed by Schlup do not even assert that they were performed as part of, or to advance an alleged conspiracy. *See* Compl. ¶¶ 33-34. In addition, there is simply no allegation in the complaint that any of the defendants conferred with each other or acted in complicity with each other for the purpose of conspiring to deprive the plaintiff of its constitutional rights. Accordingly, there is simply no basis for this Court to conclude that the plaintiff has pled with particularity the facts necessary to support a conspiracy claim. As such, the plaintiff cannot rely upon an alleged conspiracy as a

means for this Court to exercise personal jurisdiction over Schlup.

(C) Conclusion

For the reasons set forth above, this Court concludes that it does not have personal jurisdiction over defendant Schlup. Accordingly, the claims brought against Schlup in his individual capacity must be dismissed.[27]

SO ORDERED this day of 15th day of September, 2005.[28]

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[27] As already indicated, the claims against John Snow, Secretary of the Treasury, and Alberto Gonzales, Attorney General of the United States, in their official capacities are dismissed. In addition, the claims against the various unidentified FBI Agents, Paul Schlup, and other unidentified Department of the Treasury employees are dismissed as they relate to actions taken in their official capacities. Moreover, this Court lacks personal jurisdiction over Paul Schlup, thus the claims against him individually must be dismissed. Accordingly, this Court will dismiss this action. However, the Court recognizes that the claims against the various unidentified FBI agents and unidentified Department of the Treasury employees in their individual capacities might still be cognizable. Specifically, the plaintiff might be able to pursue, for example, Bivens claims against these individual defendants once their identities are known. It is likely, however, that this Court would lack personal jurisdiction over any such defendant, just as it lacks jurisdiction over defendant Schlup, as they are likely residents of Missouri and also work there. However, the Court will provide the plaintiff 30 days in which to request reinstatement of this action if it is able to identify these defendants and can demonstrate that this Court can exercise personal jurisdiction over them.

[28] An Order consistent with the Court's ruling accompanies this Memorandum Opinion.

50 U.S.C. § 1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities

(a) Any authority granted to the President by section 203 [50 USCS § 1702] may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 203 [50 USCS § 1702] may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this *title* [50 USCS §§ 1701 et seq.] and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

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50 U.S.C. § 1702. Presidential authorities

(a) In general.

(1) At the times and to the extent specified in section 202 [50 USCS § 1701], the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise –

(A) investigate, regulate, or prohibit –

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit

of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this *title* [50 USCS §§ 1701 et seq.] shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued under this title.

(b) Exceptions to grant of authority. The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly –

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 202 of this *title* [50 USCS § 1701], (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; [or]

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 5 of the Export Administration Act of 1979 [50 USCS Appx. § 2404], or under section 6 of such Act [50 USCS Appx. § 2405] to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code [18 USCS §§ 791 et seq.]; or

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

(c) Classified information. In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act [18 USCS Appx § 1(a)]) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.

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50 U.S.C. § 1703. Consultation and reports

(a) Consultation with Congress. The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this *title* [50 USCS §§ 1701 et seq.] and shall consult regularly with the Congress so long as such authorities are exercised.

(b) Report to Congress upon exercise of Presidential authorities. Whenever the President exercises any of the authorities granted by this *title* [50 USCS §§ 1701 et seq.], he shall immediately transmit to the Congress a report specifying –

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

(c) Periodic follow-up reports. At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) with respect to an exercise of authorities under this *title* [50 USCS §§ 1701 et seq.], the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b).

(d) Supplemental requirements. The requirements of this section are supplemental to those contained in title IV of the National Emergencies Act [50 USCS § 1641].

50 U.S.C. § 1704. Authority to issue regulations

The President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this *title* [50 USCS §§ 1701 et seq.].

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50 U.S.C. § 1705. Penalties

(a) A civil penalty of not to exceed $ 50,000 may be imposed on any person who violates, or attempts to violate, any license, order, or regulation issued under this *title* [50 USCS §§ 1701 et seq.].

(b) Whoever willfully violates, or willfully attempts to violate, any license, order, or regulation issued under this *title* [50 USCS §§ 1701 et seq.] shall, upon conviction, be fined not more than $ 50,000, or, if a natural person, may be imprisoned for not more than twenty years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

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50 U.S.C. § 1706. Savings and provisions

(a) Termination of national emergencies pursuant to National Emergencies Act.

(1) Except as provided in subsection (b), notwithstanding the termination pursuant to the National Emergencies Act of a national emergency declared for purposes of this *title* [50 USCS §§ 1701 et seq.], any authorities granted by this title, which are exercised on the date of

such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(2) Notwithstanding the termination of the authorities described in section 101(b) of this Act [50 USCS Appx. § 5 note], any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(b) Congressional termination of national emergencies by concurrent resolution. The authorities described in subsection (a)(1) may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act [50 USCS § 1622] and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

(c) Supplemental savings provisions; supersedure of inconsistent provisions.

(1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of

section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act [50 USCS §§ 1601(a)(1), (2), and (3), and 1622(a)(A), (B), and (C)].

(2) The provisions of this section supersede the termination provisions of section 101(a) [50 USCS § 1601(a)] and of title II of the National Emergencies Act [50 USCS §§ 1621 et seq.] to the extent that the provisions of this section are inconsistent with these provisions.

(d) Periodic reports to Congress. If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.

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50 U.S.C. § 1707. Multinational economic embargoes against governments in armed conflict with the United States.

(a) Policy on the establishment of embargoes. It is the policy of the United States, that upon the use of the Armed Forces of the United States to engage in hostilities against any foreign country, the President shall, as appropriate –

(1) seek the establishment of a multinational economic embargo against such country; and

(2) seek the seizure of its foreign financial assets.

(b) Reports to Congress. Not later than 20 days after the first day of the engagement of the United States in hostilities described in subsection (a), the President shall, if the armed conflict has continued for 14 days, submit to Congress a report setting forth –

(1) the specific steps the United States has taken and will continue to take to establish a multinational economic embargo and to initiate financial asset seizure pursuant to subsection (a); and

(2) any foreign sources of trade or revenue that directly or indirectly support the ability of the adversarial government to sustain a military conflict against the United States.

66 Fed. Reg. 49079

FEDERAL REGISTER

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Presidential Documents

PRESIDENT OF THE UNITED STATES

Executive Order 13224 of September 23, 2001

Title 3 -

The President

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism

Part III

DATE: Tuesday, September 25, 2001

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution (UNSCR) 1214 of December 8, 1998, UNSCR 1267 of October 15, 1999, UNSCR 1333 of December 19, 2000, and the multilateral sanctions contained therein, and UNSCR 1363 of July 30, 2001, establishing a mechanism to monitor the implementation of UNSCR 1333,

I, GEORGE W. BUSH, President of the United States of America, find that grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the

Pentagon committed on September 11, 2001, acts recognized and condemned in UNSCR 1368 of September 12, 2001, and UNSCR 1269 of October 19, 1999, and the continuing and immediate threat of further attacks on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and in furtherance of my proclamation of September 14, 2001, Declaration of National Emergency by Reason of Certain Terrorist Attacks, hereby declare a national emergency to deal with that threat. I also find that because of the pervasiveness and expansiveness of the financial foundation of foreign terrorists, financial sanctions may be appropriate for those foreign persons that support or otherwise associate with these foreign terrorists. I also find that a need exists for further consultation and cooperation with, and sharing of information by, United States and foreign financial institutions as an additional tool to enable the United States to combat the financing of terrorism.

I hereby order:

Section 1. Except to the extent required by section 203(b) of IEEPA (50 U.S.C. 1702(b)), or provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons that are in the United States or that hereafter come within the United States, or that hereafter come within the possession or control of United States persons are blocked:

(a) foreign persons listed in the Annex to this order;

(b) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;

(c) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to this order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order; [*49080]

(d) except as provided in section 5 of this order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General;

(i) to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to this order or determined to be subject to this order; or

(ii) to be otherwise associated with those persons listed in the Annex to this order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of this order.

Sec. 2. Except to the extent required by section 203(b) of IEEPA (50 U.S.C. 1702(b)), or provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date:

(a) any transaction or dealing by United States persons or within the United States in property or interests in property blocked pursuant to this order is prohibited, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the Annex to this order or determined to be subject to this order;

(b) any transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited; and

(c) any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, corporation, or other organization, group, or subgroup;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States; and

(d) the term "terrorism" means an activity that –

(i) involves a violent act or an act dangerous to human life, property, or infrastructure; and

(ii) appears to be intended –

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

Sec. 4. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by United States persons to persons determined to be subject to this order would seriously impair my ability to deal with the national emergency declared in this order, and would endanger Armed Forces of the United States that are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances, and hereby prohibit such donations as provided by section 1 of this order. Furthermore, I hereby determine that the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, Public Law 106-387) shall not affect the imposition or the continuation of the imposition of any unilateral agricultural sanction or unilateral medical sanction on [*49081] any person determined to be subject to this order because imminent involvement of the Armed Forces of the United States in hostilities is clearly indicated by the circumstances.

Sec. 5. With respect to those persons designated pursuant to subsection 1(d) of this order, the Secretary of the Treasury, in the exercise of his discretion and in consultation with the Secretary of State and the Attorney General, may take such other actions than the complete blocking of property or interests in property as the President is authorized to take under IEEPA and UNPA if the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, deems such other actions to be consistent with the national interests of the United States, considering such factors as he deems appropriate.

Sec. 6. The Secretary of State, the Secretary of the Treasury, and other appropriate agencies shall make all relevant efforts to cooperate and coordinate with other countries, including through technical assistance, as well as bilateral and multilateral agreements and arrangements, to achieve the objectives of this order, including the prevention and suppression of acts of terrorism, the denial of financing and financial services to terrorists and terrorist organizations, and the sharing of intelligence about funding activities in support of terrorism.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 8. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 9. Nothing contained in this order is intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees or any other person.

Sec. 10. For those persons listed in the Annex to this order or determined to be subject to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 11. (a) This order is effective at 12:01 a.m. eastern daylight time on September 24, 2001. [*49082]

(b) This order shall be transmitted to the Congress and published in the Federal Register.

/S/ George W. Bush

THE WHITE HOUSE,

September 23, 2001. [*49083]

ANNEX

Al Qaida/Islamic Army

Abu Sayyaf Group

Armed Islamic Group (GIA)

Harakat ul-Mujahidin (HUM)

Al-Jihad (Egyptian Islamic Jihad)

Islamic Movement of Uzbekistan (IMU)

Asab al-Ansar

Salafist Group for Call and Combat (GSPC)

Libyan Islamic Fighting Group

Al-Itihaad al-Islamiya (AIAI)

Islamic Army of Aden

Usama bin Laden

Muhammad Atif (aka, Subhi Abu Sitta, Abu Hafs Al Masri)

Sayf al-Adl

Shaykh Sai'id (aka, Mustafa Muhammad Ahmad)

Abu Hafs the Mauritanian (aka, Mahfouz Ould al-Walid, Kahlid Al-Shanqiti)

Ibn Al-Shaykh al-Libi

Abu Zubaydah (aka, Zayn al-Abidin Muhammad Husayn, Tariq)

Ada al-Hadi al-Iraqi (aka, Abu Abdallah)

Ayman al-Zawahiri

Thirwat Salah Shihata

Tariq Anwar al-Sayyid Ahmad (aka, Fathi, Amr al-Fatih)

Muhammad Salah (aka, Nasr Fahmi Nasr Hasanayn)

Makhtab Al-Khidamat/Al Kifah

Wafa Humanitarian Organization

Al Rashid Trust

Mamoun Darkazanli Import-Export Company

[FR Doc. 01-24205 Filed 9-24-01; 1:05 pm]

67 Fed. Reg. 44751
FEDERAL REGISTER
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Presidential Documents

PRESIDENT OF THE UNITED STATES

Executive Order 13268 of July 2, 2002

Title 3 –

The President

Termination of Emergency With Respect to the Taliban and Amendment of Executive Order 13224 of September 23, 2001

Part V

DATE: Wednesday, July 3, 2002

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, find that the situation that gave rise to the declaration of a national emergency in Executive Order 13129 of July 4, 1999, with respect to the Taliban, in allowing territory under its control in Afghanistan to be used as a safe haven and base of operations for Usama bin Ladin and the Al-Qaida organization, has been significantly altered given the success of the military campaign in Afghanistan, and hereby revoke that order and terminate the national emergency declared in that order with

respect to the Taliban. At the same time, and in order to take additional steps with respect to the grave acts of terrorism and threats of terrorism committed by foreign terrorists, the continuing and immediate threat of further attacks on United States nationals or the United States, and the national emergency described and declared in Executive Order 13224 of September 23, 2001, I hereby order:

Section 1. The Annex to Executive Order 13224 of September 23, 2001, is amended by adding thereto the following persons in appropriate alphabetical order:

Mohammed Omar (aka, Amir al-Mumineen [Commander of the Faithful])

The Taliban.

Sec. 2. For the purposes of this order and Executive Order 13224 of September 23, 2001, the term "the Taliban" is also known as the "Taleban," "Islamic Movement of Taliban," "the Taliban Islamic Movement," "Talibano Islami Tahrik," and "Tahrike Islami'a Taliban". The Secretary of State, in consultation with the Secretary of the Treasury, is hereby authorized to modify the definition of the term "the Taliban," as appropriate.

Sec. 3. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. [*44752]

Sec. 4. Pursuant to section 202 of the NEA (50 U.S.C. 1622), termination of the national emergency with respect to the Taliban shall not affect any action taken or proceeding pending not finally concluded or determined as of the

date of this order, or any action or proceeding based on any act committed prior to the date of this order, or any rights or duties that matured or penalties that were incurred prior to the date of this order.

S George W. Bush
THE WHITE HOUSE,
July 2, 2002.

[FR Doc. 02-16951 Filed 7-2-02; 11:09 am]

70 Fed. Reg. 8499
FEDERAL REGISTER
Vol. 70, No. 033
Presidential Documents

PRESIDENT OF THE UNITED STATES

Executive Order 13372 of February 16, 2005

Clarification of Certain Executive Orders Blocking Property and Prohibiting Certain Transactions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

DATE: Friday, February 18, 2005

I, GEORGE W. BUSH, President of the United States of America, in order to clarify the steps taken in Executive Order 12947 of January 23, 1995, as amended by Executive Order 13099 of August 20, 1998; and Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, in particular with respect to the implementation of section 203(b)(2) of IEEPA (*50 U.S.C. 1702*(b)(2)), hereby order:

Section 1. Section 4 of Executive Order 13224 is hereby amended to read as follows:

"**Sec. 4.** I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of

IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of, any persons determined to be subject to this order would seriously impair my ability to deal with the national emergency declared in this order, and would endanger Armed Forces of the United States that are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances, and I hereby prohibit such donations as provided by section 1 of this order. Furthermore, I hereby determine that the Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX, Public Law 106-387) shall not affect the imposition or the continuation of the imposition of any unilateral agricultural sanction or unilateral medical sanction on any person determined to be subject to this order because imminent involvement of the Armed Forces of the United States in hostilities is clearly indicated by the circumstances."

Sec. 2. Section 3 of Executive Order 12947 is hereby amended to read as follows:

"**Sec. 3.** I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of, any person whose property or interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 1."

Sec. 3. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the

Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order. [*8500]

(b) Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization in compliance with applicable laws and regulations.

(c) Amendments to Executive Orders made by this order shall take effect as of the date of this order.

Sec. 4. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

Sec. 5. This order shall be transmitted to the Congress and published in the **Federal Register**.

/S/ George W. Bush

THE WHITE HOUSE,

Washington, February 16, 2005.

[FR Doc. 05-3385 Filed 2-17-05; 8:57 am]

5 U.S.C. § 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall –

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be –

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this *title* [*5 USCS §§ 556* and *557*] or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISLAMIC AMERICAN RELIEF AGENCY
(IARA-USA)
201 East Cherry Street, Suite D
Columbia, MO 65203

Plaintiff

vs.

Case No. 1.04CV02264
Hon. Judge Reggie B. Walton

UNIDENTIFIED FBI AGENTS, PAUL SCHLUP, AND OTHER UNIDENTIFIED DEPARTMENT OF TREASURY PERSONNEL, in their individual and official capacities, JOHN SNOW, in his individual and official capacity as Secretary of the Department of Treasury, JOHN ASHCROFT, in his individual and official capacity as Attorney General of the United States, and United States Department of Justice,

Defendants

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AFFIDAVIT OF ERIC VICKERS

STATE OF MISSOURI)
) ss
COUNTY OF ST. LOUIS)

Eric Vickers, being first duly sworn, deposes and states as follows:

1. I graduated from the University of Virginia Law School in 1981, and began practicing as an associate attorney with one of the most prestigious law firms, Bryan Cave;

2. Two (2) years later, I opened my own law firm specializing in civil rights and business law;

3. In 1984, I began serving a special council to the Washington, D.C. based Minority Business Enterprise Legal Defense and Educational Fund, Inc. (MBELDOEF), which was founded by former Maryland Congressman Parren Mitchel to protect through litigation, the rights of minority businesses;

4. In the year 2000, I founded the Coalition for North St. Louis Economic Development (CNSLED), a non-profit organization whose mission is the economic revitalization of the inner city of St. Louis;

5. On two (2) separate occasions I ran for Congress; years 1994 and 2000;

6. I am the recipient of numerous awards for legal and providing services to the community, including most recently, the Malcom X Distinguished Service Award;

7. In 1985, I helped establish Islamic American Relief Agency (IARA-USA), which was formerly known as Islamic African Relief Agency – United States Affiliate;

8. At the time of its establishment, I was Vice-President of the organization;

9. The organization was organized exclusively for charitable educational and similar purposes allowed for a non-profit organization organized under the laws of the State of Missouri;

10. More specifically, the intent of the organization was to provide social and charitable services to the people of the continent of Africa through (i) providing care, shelter and service to refugees, the homeless and the oppressed; (ii) providing supplies and social and medical services to persons victimized by natural catastrophies such as floods, earthquakes and famine, and (iii) provide educational resources to disadvantaged persons and communities in Africa in order to enable them to achieve self-sufficiency and determination;

11. At the time the organization was organized, it was with the specific intent of the incorporators that IARA-USA would be independently run by its own decisionmakers residing in the United States;

12. At the time the organization was set up, there was no intent whatsoever to be owned, influenced or controlled by any other organization;

13. It was the specific intent of the organization to have a separate governing body, and its own employees;

14. The intent of the organization was to engage only in those activities permitted by the laws of the land as set forth in the attached Articles of Incorporation of a General Not-For-Profit Organization;

15. At the time the organization was set up, I had no contacts and did not engage in any communications whatsoever with the Sudanese organization, Islamic African Relief Agency;

16. At the time IARA-USA was set up, there was no alleged intent or plan or design that IARA-USA would in any manner be controlled, owned or influenced by any other organization or foreign entity, including, Islamic African Relief Agency in Sudan;

17. At the time the organization was set up, it was the specific intent of IARA-USA to generate its own funds, and to be the sole determiner of how its funds would be distributed in an effort to fulfill the legal objectives of the organization which include, but not limited to, combating widespread famine and helping the impoverished persons in Africa;

18. On the record, I was the registered agent from 1985 to 2004, and during that entire time period, my belief has remained the same; that IARA-USA has consistently maintained its sole independence, was the sole determiner of where its funds would be allocated, and was never owned, controlled or influenced by any other organization, including the Sudanese organization, Islamic African Relief Agency.

19. From the organization's inception until today, I have no knowledge or belief, whatsoever, that IARA-USA ever supported terrorism or any wrongful act, all I saw was good humanitarian work performed by the organization;

20. I personally condemn any act of terrorism or any act supporting such horrific conduct.

Further, Affiant sayeth not.

/s/ Eric Vickers
Eric Vickers

Subscribed and sworn to
before me this 14th day
of March, 2005.

/s/ [Illegible]

DORRIS K. WISE
Notary Public – Notary Seal
STATE OF MISSOURI
Lincoln County
My Commission Expires:
Sept. 11, 2005